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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 451

JOEL ROSENBERG, PETITIONER,

vs.

UNITED STATES OF AMERICA.

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT**

**CERTIORARI GRANTED DECEMBER 8, 1958
PETITION FOR CERTIORARI FILED OCTOBER 14, 1958**

SUPREME COURT OF THE UNITED STATES

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JOEL ROSENBERG, PETITIONER,

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UNITED STATES OF AMERICA.

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COURT OF APPEALS FOR THE THIRD CIRCUIT

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[fol. 1]

**IN UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

Criminal No. 18,582

UNITED STATES OF AMERICA,

vs.

JOEL ROSENBERG.

DOCKET ENTRIES

1957

Aug. 21, Mandate of U. S. Circuit Court reversing judgment of conviction of this Court and ordering a new trial, filed.

Aug. 30, Motion for return of seized property and the suppression of evidence, filed.

Aug. 30, Motion for inspection and examination of statements made by certain government witnesses to F.B.I., filed.

Aug. 30, Motion for inspection and examination of testimony of certain government witnesses before Grand Jury, filed.

Aug. 30, Motion for continuance filed.

Sept. 12, Petition of U. S. for and order of court directing that a writ of habeas corpus as to K. Meirdiercks, a witness, filed. Writ exit.

Oct. 1, Order re. release of impounded exhibits to U. S. Attorney filed.

Oct. 1, Memorandum of conference of 9-18-57 before Lord, J., filed.

Oct. 1, Hearing sur. motion for continuance of trial-motion denied.

Oct. 1, Hearing sur. motions to inspect statements of witnesses, etc. The Court makes certain rulings.

1957

Oct. 1, Jury and alternate jurors sworn.

Oct. 1, Trial-witness sworn.

Oct. 2, Trial resumed.

Oct. 3, Trial resumed.

Oct. 4, Trial concluded.

Oct. 7, Verdict: The jury returns a sealed verdict of Guilty on each of Counts Nos. 1 and 2. Jury polled, Bail con.
[fol. 2]

1957

Oct. 7, Verdict of jury filed.

Oct. 10, Transcript of hearing of 10-1-57 before Lord, J., filed.

Oct. 11, Defendant's motion for judgment of acquittal or for a new trial filed.

Oct. 15, Transcript of hearing 10-1-57 filed.

Oct. 24, Habeas Corpus returned "Executed" filed.

Oct. 29, Transcript of testimony filed. Four volumes.

Oct. 29, Motion for leave to take depositions of Edward Dangel, Esq. and Dr. Reevan Levine sur defendantions motion for judgment of acquittal or a new trial filed.

1957

Oct. 30, Argued sur defendant's motion for judgment of acquittal or a new trial.

Nov. 8, Affidavit of Edward Dangel sur defendant's motion for judgment of acquittal or a new trial filed.

Nov. 14, Answer sur affidavits of Edward Dangel and Dr. Reevan Levine, filed.

Nov. 22, Withdrawal of appearance of Edward Dangel and Leo E. Sherry for the defendant.

Nov. 29, Amendment to answer of affidavits of Edward Dangel and Dr. Reevan Levine filed.

Dec. 2, Transcript of hearing 10-30-57 filed.

1957

Dec. 12, Withdrawal of defendant's motion for leave to take depositions of Edward Dangel.

Dec. 12, Transcript 9-30-57 filed.

Dec. 19, Transcript 2-4-57 filed.

[fol. 3]

1958

Jan. 3, Memorandum Opinion of Van Dusen, and order denying defendant's motion for judgment of acquittal or a new trial filed.

1-6-58 Noted and Notice Mailed.

Sentence Count #2—Imprisonment 5 years.

Count #1— " 3 years—suspended.

Probation of 5 years to commence at expiration of sentence on Count #2.

(Bail Continued)

Jan. 6, Judgment and Commitment filed.

Jan. 10, Defendant's Notice of Appeal filed.

Jan. 10, Copy of Clerk's statement of docket entries filed.

Jan. 22, Copy of commitment returned "New Trial Ordered" and filed.

Jan. 31, Record transmitted to United States Court of Appeals.

[fol. 5]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

No. 18582

UNITED STATES OF AMERICA,

v.

JOEL ROSENBERG.

MOTION FOR INSPECTION AND EXAMINATION AND INSPECTION
OF STATEMENTS MADE BY CERTAIN GOVERNMENT WITNESSES
TO THE FEDERAL BUREAU OF INVESTIGATION—Filed
August 30, 1957

The defendant, by his Attorneys, Edward M. Dangel, Leo E. Sherry and Stanley B. Singer says that:

By indictment filed on *November 13, 1955*, he was indicted in two counts: Count 1 for conspiring in violation of 18 U.S.C. §371 with one Meierdiercks and a Mr. Rice to transport in interstate commerce a check in the amount of \$5760.00, knowing the same to have been procured by fraud in violation of 18 U.S.C. §2314; and Count 2 for the substantive offense of transporting with fraudulent (sic) intent, from Philadelphia, Pennsylvania to Washington, D. C., a fraudulently obtained certified check of the value of \$5760.00 in violation of 18 U.S.C. §2314(1b):

On *November 28, 1955*, the defendant interposed a plea of "Not Guilty" to the said charges.

After trial, the defendant on *June 13, 1956* was found guilty on both counts; after an appeal, the United States Court of Appeals for the Third Circuit reversed the judgment of conviction and ordered a new trial; the ground of said reversal was the failure of the trial judge to permit counsel for the appellant to inspect the Grand Jury testimony and the statements to the Federal Bureau of Investigation of the government witness, one Charles K. Meierdiercks; thereafter the said Court of Appeals refused

[fol. 6] to permit the Government to file a petition for rehearing. This case has been set down for trial in this Court on September 30, 1957. At the former trial, the principal witnesses for the Government were said Meierdiercks, Harry Gorman, Florence M. Vossler, Thomas J. McManus, Thomas Ronan and Golden J. P. Ruel, and it appeared that they and each of them had made statements to the Federal Bureau of Investigation concerning the matters to which they testified at the trial.

The defendant believes that the Federal Bureau of Investigation has in its control and possession various and sundry statements and reports of declarations made by said witnesses concerning the matters to which they have testified and will testify at the on-coming trial.

The defendant has been informed and believes that the Government intends to use at the trial the said witnesses, Meierdiercks, Gorman, Vossler, McManus, Ronan and Ruel.

In order to properly prepare his defense, the defendant should be permitted forthwith to examine the statements and reports in the possession and control of the Federal Bureau of Investigation.

Wherefore the defendant moves that this Court order the Federal Bureau of Investigation to afford the defendant reasonable opportunity to examine and inspect and make copies, if necessary, of such statements and reports of declarations made to it by the said witnesses, Meierdiercks, Gorman, Vossler, McManus, Ronan and Ruel.

/s/ Edward M. Dangel, /s/ Leo E. Sherry, /s/
Stanley B. Singer, Attorneys for the Defendant.

[fol. 7] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

MOTION FOR CONTINUANCE—Filed August 30, 1957

The defendant by his attorneys, Edward M. Dangel, Leo E. Sherry and Stanley B. Singer, says that:

This case has been set down for re-trial in this Court on September 30, 1957. At the former trial, the principal witnesses for the Government were Kenneth Meirdiercks, (sic) Harry Gorman, Florence M. Vossler, Thomas J. McManus, Thomas Ronan and Golden J. P. Ruel, and it appeared that they and each of them had made statements to the Federal Bureau of Investigation and before the Federal Grand Jury concerning the matters to which they testified at the trial.

The defendant believes that the Federal Bureau of Investigation and the Office of the United States Attorney have in their possession various and sundry statements and reports of declarations made by said witnesses before the Federal Bureau of Investigation and the Federal Grand Jury concerning the matters to which they have testified and will testify at the on-coming trial.

The defendant has been informed and believes that the [fol. 8] Government intends to use at the trial the said witnesses, Meirdiercks, (sic) Gorman, Vossler, McManus, Ronan and Ruel.

In order to properly prepare his defense, the defendant should be permitted forthwith to examine the statements and reports in the possession and control of the Federal Bureau of Investigation, Federal Grand Jury and the Office of the United States Attorney.

The defendant has this 30th. day of August, 1957, filed with the Clerk of this Court and the office of the United States Attorney the following motions:

Motion for Inspection and Examination of the Testimony of Certain Witnesses of the Government before the Grand Jury

Motion for Inspection and Examination of Statements Made by Certain Government Witnesses to the Federal Bureau of Investigation

Wherefore the defendant moves that this Court order a continuance for such reasonable period from the date of the hearing and finding on the aforesaid motions as to afford the defendant proper opportunity to examine and inspect and make copies, if necessary, of such statements

and reports of declarations made to the Federal Bureau of Investigation and before the Federal Grand Jury by the witnesses, Meirdiercks, (sic) Gorman, Vossler, McManua, (sic) Ronan and Ruel.

/s/ Stanley B. Singer, Edward M. Dangel, Leo E. Sherry, Stanley B. Singer, Attorneys for defendant.

[fol. 9] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

MEMORANDUM OF CONFERENCE—Filed October 1, 1957

on the following motions in the above case held before me on September 18, 1957, and of my rulings on these motions:

1. Motion for Continuance.
2. Motion for Inspection and Examination and Inspection of Statements Made By Certain Government Witnesses to the Federal Bureau of Investigation.
3. Motion for Inspection and Examination of the Testimony of Certain Government Witnesses Before the Grand Jury.

There were present: for the Government, Louis C. Bechtle, Esq.; and for the defendant, Stanley B. Singer, Esq.

The motion for continuance was denied, with right granted to the defendant to renew the motion before the judge assigned to try the case.

The motions listed under 2 and 3 above were denied on the ground that the decision in *Jencks v. United States*, 353 U. S. 657 (1957), does not require the production of the documents covered by these motions until such time as a witness is actually put on the stand by the Government. The defendant was also granted the right to renew these motions before the judge assigned to try the case.

Counsel for defendant was given an opportunity to present argument in support of the motions.

/s/ John W. Lord, Jr., Judge.

October 1, 1957

CC. Stanley B. Singer, Esq., Louis C. Bechtle, Esq.

[fol. 10] [File endorsement omitted]

[fol. 11]

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

Before Hon. Francis L. Van Dusen, J., and a Jury.

Transcript of Testimony—October 1, 1957

Philadelphia, Pa.

APPEARANCES:

Present: Harold K. Woods, Esq., United States Attorney, and Louis C. Bechtle, Esq., Assistant United States Attorney, for the Government.

Stanley B. Singer, Esq., for the Defendant.

[fol. 12] **COLLOQUY BETWEEN COURT AND COUNSEL**

Mr. Singer: May it please the Court, the other two motions I believe can be considered at one time. There is a motion for the inspection and examination of the testimony of certain Government witnesses before the Grand Jury, and there is a motion for the inspection and examination of certain statements made by Government witnesses to the Federal Bureau of Investigation.

When this particular matter was heard before the Court of Appeals for the Third Circuit, it was reversed on the basis that the defendant had been denied the right to inspect these various statements, both those of the Federal Bureau of Investigation and those of the Grand Jury.

[fol. 13] In view of that particular decision, the defendant has seen fit to present a motion to the Court for examination of these records prior to the time of trial. Now, initially, the primary reason that these particular motions were made was to expedite this particular trial, and to save both the Commonwealth—rather, the Government and the defendant considerable expense, and the Court considerable time. It must be remembered that initially these motions were made approximately three weeks ago before Judge Lord. And in Judge Lord's chambers in the presence of Mr. Béchtle I stated that the primary reason for so doing was that we did not think it would be fair to have a trial wherein it would be necessary to constantly interrupt the testimony of a witness and call for an adjournment, during which time we would be afforded an opportunity under the new law, to examine these various statements; so that we thought it would be proper and in keeping with a fair trial to examine these records beforehand.

It must be remembered that every one of these witnesses has already testified in this particular matter. And in keeping with the Jencks decision, and fairness of trial that it sets forth, we feel that our motion is proper, properly and seasonably raised, and that any limitations that the Government through its legislative bodies seeks to modify [fol. 14] —by the legislation seeks to modify the Jencks decision; that such modification in itself is unconstitutional; that being so, the Legislature is seeking to place itself in the position of the Supreme Court and conduct their affairs.

We contend that under the Jencks decision we have fully qualified our right to examine these records. The Jencks decision is more than a mere set of rules in reference to the inspection of FBI records. I think that can be supported by the attitude of the Circuit Court of Appeals for the Third Circuit, in that under the Jencks decision not only did they permit us the right to inspect the FBI files, but they also permitted us the right to inspect the Grand Jury notes of testimony. Thus, our Circuit Court has seen fit to recognize the Jencks decision as something more than just treating with FBI reports. They have seen fit to see it as a basic element of a fair and impartial trial; that where the groundwork is properly laid, such as we have

done in this case, that the defendant be afforded an opportunity to make his examination prior to the time of trial.

I merely reiterate that we made these motions three weeks ago so that there would be no thought that we are making them at this time for the purpose of delay.

The Court: Yes. I understand that you are not making [fol. 15] them for the purpose of delay, and that you are trying to do it in order to save time.

Mr. Singer: That is correct, Your Honor; time and expense for all parties concerned.

The Court: All right. Now, do you care to say anything?

Mr. Bechtle: First, Your Honor, I would like to say that Judge Lord has denied this motion about a week or so ago, although he again, as in the motion for continuance, reserved the right to make the motion again. My argument is only—

The Court: Well, there are two motions here; one for the statements, and one for the Grand Jury minutes.

Mr. Bechtle: Judge Lord denied both motions about a week ago.

The Court: Yes.

Mr. Bechtle: My argument only consists of Section (a) of this amendment to Title 18, which is the new Section 3500. I have a copy of it here, and I would like to read the one sentence, that is all it is, and I think it properly covers the motions now before the Court. It says, "In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or a prospective Government [fol. 16] witness, other than the defendant, to an agent of the Government shall be the subject of a subpoena, discovery or inspection until said witness has testified on direct examination at the trial of the case."

I think that pretty well spells out the point in time when the defendant is entitled to this turn-over procedure. And it is not just so much the words there as it is the practical aspect, because we really don't know what he is entitled to until we hear the testimony of a witness. Admittedly, many witnesses in this new trial will be the same as in the other, but I really don't know, Your Honor, specifically what question I may ask following one question or another.

I may omit a question, I may add a question. I may decide not to call a witness, and I really do not think that anybody here is competent to say now what is going to be relevant in terms of a turn-over statement, and I just think that we are all incapable of telling Mr. Singer what he is entitled to.

The Court: I would agree with that on everybody except Meierdiercks, but it seems quite clear that you are going to call Mr. Meierdiercks.

Mr. Bechtle: Yes, quite clear.

The Court: And it also seems fair to the defendant that he have an opportunity to examine Mr. Meierdiercks' state-[fol. 17] ment and the Grand Jury minutes fully. I am also reluctant to go against this statute, and the way I suggest we handle it is that we have the jury selected and sworn, have the opening speeches, call Meierdiercks and put him on the stand—we will not finish the testimony today—and then when he is on the stand I will give the statements to Mr. Singer, and in that way I will be complying with both the Jencks case and the statute.

As to the others, I do not think you are entitled to them. I do not think you are entitled to them, really, with Meierdiercks, until the direct testimony is finished, but under the circumstances that we know Meierdiercks is going to be the principal witness, I will give you more than you are entitled to.

Mr. Singer: May it please the Court, what the U. S. Attorney has stated is from the text of the new Act, and the new Act states—and I am quoting—only at the end—“Until said witness has testified on direct examination at the trial of the case.” These witnesses have already testified.

Mr. Bechtle: Not in this case, Your Honor.

The Court: No, not in this case.

Mr. Bechtle: This is a new trial.

The Court: I mean, technically, he doesn't have to call [fol. 18] Meierdiercks, and, therefore, I think it is well to comply with the statute if we can, and I think that will be very fair to you, because it is perfectly clear that Meierdiercks cannot possibly finish his testimony today, and you will have all evening to look over his statements—and they are not that long—I remember them. It didn't take me very long to read them over—and the Grand Jury minutes.

And you will have all evening to examine them and until ten o'clock tomorrow morning. And also if when Meierdiercks completes his testimony you need any additional time, you can apply for it, but I think that is very fair to you, Mr. Singer.

Mr. Singer: Well, it has been my impression in the various conversations and such that I have had with the United States Attorney's office that it is their opinion that we are limited by the statements of the various witnesses as to what we can examine in the records and thus use for impeachment purposes; and that is not my interpretation of the Jencks decision whatsoever.

The Court: Well, we will argue about that when we come to it. I will give you the statement by Meierdiercks in full, and everything he said before the Grand Jury, so we are not concerned with that. When they call the other witnesses, then you can make your application. Now, they [fol. 19] could well try the case without any witnesses but Meierdiercks, under my memory. They may call these other people, but they don't have to, to prove their case, and until they do, I do not see any sense of going into a lot of argument about it.

Mr. Singer: May it please the Court, we have given considerable thought to this particular matter. It is not something that we have worked on for a short period of time.

The Court: Oh, I know you have.

Mr. Singer: And we are of the strong opinion that under the facts and under the Jencks decision, notwithstanding the applicable federal statutes, we are entitled at this time, under the ruling of the Circuit Court of Appeals in the case of United States v. Joel Rosenberg, to see these particular matters prior to the time of trial.

The Court: Where does it say that in the ruling of the Third Circuit?

Mr. Singer: It is our interpretation.

The Court: What is the language? What does it say?

Mr. Singer: It merely says that—it refers to the Jencks decision, and the only part that is applicable, besides the short history of the case, is that the failure of trial judge [fol. 20] to permit counsel for defendant—pardon me—to inspect at the trial the witnesses' Grand Jury testimony

and statement to the FBI as required by the rule announced in the Jencks case compels us to grant a new trial.

That is the only thing that is really applicable, and we feel that under the ruling in the Jencks decision—

The Court: Well, that is all it says, that I did not give them to you. I am going to give them to you. It doesn't say when I have to give them to you.

Mr. Singer: We feel that we are entitled to them for something slightly more than impeachment value alone. We are entitled to them in order to properly prepare our defense under the circumstances. Now, the Government, being practical, must admit that it is impossible for them to even hope to try this case without the testimony of Meierdiercks, limiting it to that respect alone, so that in that category I feel that we are entitled, in order to properly prepare our case and to investigate various claims, to have complete and full disclosure with a minimum as to Meierdiercks, in reference to any and all statements that he has made to the FBI concerning this particular alleged transaction, and as to any and all statements that he has made before the Federal Grand Jury in this respect. And I feel that the fairness of the trial demands that the defendant be afforded [fol. 21] that minimum degree of protection.

The Court: I understand your argument, and I know you are sincere in making it, but naturally I have been very interested in this case, both because of the fact that I tried it before—and when that opinion came down I read it, and I considered the matter very carefully; also I have read the decisions of many other district courts during the summer which have considered this problem—and because I have considered this matter in detail in the case of the United States against Unger which I have been trying (sitting in the New Jersey District Court under a special assignment), where I have heard arguments and received briefs on the question, so that I also have thought about it a lot. I can well be wrong, but my considered opinion is that I am giving you more than you are entitled to under the procedure which I suggested. Your record is protected. You applied for these things before, and Judge Lord has turned you down. You have applied for them again, and I have not given you everything you have asked

for. But this is not something that I am just considering for the first time.

Mr. Singer: I appreciate that, Your Honor.

The Court: I have considered it, and I have read Judge Palmieri's decision and the other decisions. There is another judge in the Southern District of New York who decided the matter the last week in August. I forget his [fol. 22] name—Judge Buy, or something like that. And there are several other decisions, as you know, that have considered this problem, just what the Jencks case means. And that was even before the statute.

[fol. 22a] [File endorsement omitted]

[fol. 23]

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

Before Hon. Francis L. Van Dusen, J., and a Jury.

Transcript of Testimony—October 1, 1957

Philadelphia, Pa.

APPEARANCES:

Present: Louis C. Bechtle, Esq., Assistant United States Attorney, for the Government.

Stanley B. Singer, Esq., for the Defendant.

[fol. 24] EVIDENCE ON BEHALF OF THE GOVERNMENT

CHARLES KENNETH MEIERDIERCKS, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bechtle:

Q. What is your full name again, sir?

A. Charles Kenneth Meierdiercks.

Q. Now, Mr. Meierdiercks, were you brought up here to Philadelphia from some place during the last week to testify at this trial?

A. Yes, sir.

Q. And where were you brought from?

A. Atlanta Penitentiary.

Q. And are you presently, except for your presence here [fol. 25] in this courtroom, an inmate in Atlanta Federal Penitentiary?

A. I am.

Q. Mr. Meierdiercks, what business were you in in 1954?

A. I was buying and selling oil leases.

Q. And did you have an office where you operated from?

A. Well, yes, I did.

Q. Could you tell us where that is, or where that was at that time?

A. Well, I was working from an office in 60 East 42nd Street, New York.

Q. Now, Mr. Meierdiercks, do you know the defendant, Joel Rosenberg?

A. I do.

Q. Would you point him out, please?

A. Yes, sir. Mr. Rosenberg is sitting directly behind you, with the blue suit.

Mr. Bechtle: Could we have the record indicate, Your Honor, that the witness did point out the defendant?

The Court: Yes, he did. The gentleman there with glasses, is that right, Mr. Meierdiercks?

The Witness: Yes, sir, yes, sir.

The Court: The record will indicate that Mr. Meierdiercks pointed out the defendant. That is Mr. Joel Rosen- [fol. 26] berg, whom you know?

The Witness: Yes, sir.

The Court: And what was that address, 60 East 42nd Street?

The Witness: 60 East 42nd Street was the office that I was working from.

The Court: And this was December, 1954.

The Witness: Yes, sir.

The Court: Is that your question, Mr. Bechtle?

Mr. Bechtle: That is correct, sir. I may not have said December, but I would like to amend the record at this time to indicate that I meant December.

The Court: All right. I think you said it.

By Mr. Bechtle:

Q. When did you first meet the defendant, to the best of your recollection, Mr. Meierdiercks?

A. Oh, I would say about four or five years previous to that.

Q. And did you know him continuously from then until December, 1954?

A. No. I knew of him after having met him, and then I didn't meet him again for about four or five years.

Q. Do you know a woman named Miss Florence Vossler?

A. Yes, sir, I do.

Q. Is she in the courtroom now?

[fol. 27] A. No, she is not.

Q. When did you first meet Miss Vossler?

A. Mr. Rosenberg called me at my hotel in New York. I was staying at the Gladstone Hotel, and we met and had dinner.

Q. On or about what date, if you recall?

A. Oh, I would say it was sometime after New Years of 1955.

Q. Was it in January?

A. Yes; directly, the first—during January, yes.

Q. And you say you met the defendant, Mr. Rosenberg, at the Gladstone Hotel,—or, you met him, at least, in New York?

A. No. He called me at the Gladstone and I went over to his hotel, which was the Park Central.

Q. And did you have a discussion with him there?

A. Yes, sir.

Q. Do you recall what the substance of that discussion was?

A. Well, he said that he had a customer—

Mr. Singer: May it please the Court, I object to that particular statement.

The Court: You object to the question?

Mr. Singer: That's right, sir; as to the contents of the entire conversation.

[fol. 28] The Court: Well, I think that he can testify to it. You can move to strike it out afterwards.

Mr. Singer: May I have an objection on the record, Your Honor.

The Court: Your objection is on the record. Objection overruled. Now, what did Mr. Rosenberg say to you and what did you say to him?

The Witness: Well, Mr. Rosenberg said that he had somebody that he wanted to have me call on in Jersey, and he took the name from a list of names that he had, and we made arrangements to go to Jersey the following day.

By Mr. Bechtle:

Q. Now, where in Jersey, Mr. Meierdiercks, if you recall?

A. East Orange, New Jersey, on Walnut Street.

Q. And who was the person that you were to see?

A. Florence M. Vossler.

Q. Now, did Mr. Rosenberg suggest that a profit could be made from this transaction?

A. Yes, he said—

Mr. Singer: May it please the Court, I feel that at this stage I must object. The United States Attorney is telling the defendant what to say.

The Court: Yes, I think that is right. That is a leading question, and I will sustain the objection.

[fol. 29] Now, first of all, to go back, Mr. Meierdiercks, to the conversation which you had in the defendant's hotel, the defendant Rosenberg's hotel, which I understand was the Park Central Hotel—

The Witness: Yes, sir.

The Court: —is that all he said to you, that he just wanted you to go over and see someone in Jersey?

The Witness: Well, that was the reason that he wanted me to meet him the following morning, to go to Jersey to see this customer, this person that owned the lease.

The Court: I see. In other words, he mentioned the word "customer"?

The Witness: Yes, sir.

The Court: And he mentioned that the person whom you told us was Miss Vossler owned a lease?

The Witness: Yes, sir.

The Court: Did he mention what type of a lease it was?

The Witness: Well, he said it was a lease in New Mexico, and he had a list of people who owned leases in New Mexico, and she was one of them.

The Court: I see. All right. Proceed, Mr. Bechtle.

By Mr. Bechtle:

[fol. 30] Q. What kind of leases, Mr. Meierdiercks?

A. Well, they were potential oil leases, non-producing.

Q. What was the purpose, if you know, or if Mr. Rosenberg told you, of your meeting Miss Vossler?

A. Well, my purpose was to go in and establish a bid on her leases after determining that she was willing to sell.

[fol. 31] Q. Did you really intend to buy those leases?

A. No.

Q. Well, what did you intend to do?

A. Well, the purpose was to offer her a price for the leases at that particular time.

He just said, "Go in and start off at around five, ten, \$15, somewhere in there, and see if she is willing to sell and find out what other leases she has and everything else you can find out while you are there."

Q. And did you go?

A. I did.

Q. To East Orange?

A. Yes, sir. I did.

Q. Did you see Miss Vossler as planned?

A. Yes.

Mr. Rosenberg met me the next morning with his car and we drove over to East Orange.

Q. From where, Mr. Meierdiercks?

A. From New York, from Mr. Rosenberg's hotel. We drove over to East Orange and we got—we found Walnut Street and we found the house by that number, 4—I think it was 457, some—some number like that—and, anyway, that was her home, and he drove by and he looked the house over to see whether it was a pretentious residence or just [fol. 32] ordinary, and drove around the block and came

back and then let me off on the corner, and I walked down to the house, and he told me that he would be waiting down at the corner at a candy store, waiting for me to come out to find what I had done.

Q. Now, I wonder if you will explain to us what you had done when you went there.

A. Well, I went into the house, and there was a gentleman sitting there, and he waved from the window. He was sitting right in the window, and he waved from the window for me to come in, come in the house, and I found out that he was invalided and he couldn't get up to let me in, so I walked in and he—I asked him if Miss Vossler was home, and he said, "No; she isn't here. She will be back in about an hour. What did you want to see her about?"

So I said, "Well, I would like to see Miss Vossler personally."

"Well," he said, "well, what is it you want to see her about?"

"Well," I said, "I wanted to see her about some oil leases that she has."

And he said, "Well, I am interested in those oil leases with her, and she is not here right now. I will talk to you about them."

I said, "Well, I would like to talk to both of you, then, [fol. 33] together."

He said, "She will be back in about an hour."

So I left the house and went down and I met with Mr. Rosenberg, and we waited. We had lunch. Miss Vossler was somewhere in town shopping, and we had lunch—it was somewhere around 12 o'clock—and I went back in an hour and Miss Vossler was there.

Q. Well, when you say, "we"—you had lunch—whom do you mean?

A. Mr. Rosenberg and myself, we had a bite to eat, and then I went back in. Mrs. Vossler was home then.

Q. Did you tell Mr. Rosenberg what had happened at your first contact at that house?

A. Yes. I did.

Q. Continue, Mr. Meierdiercks.

A. Well, when I went back I saw—I met Mrs. Vossler and I described the particular lease that I was interested in, and she got her leases out.

She said, "Yes, I have it."

Mr. Singer: May it please the Court, I object. I think the witness should be instructed to restrict his testimony to that which he saw and did actually himself, not to that which was said by a third party who is not presently here.

[fol. 34] The Court: Well, I think that in this case, as I understand the charge which the government is making, the words which she uttered are themselves relevant, and I instruct the jury that when any witness such as this testifies to a statement made by a third party, you may not consider that for the purpose of the truth of the matter asserted. In other words, you can't consider what Mrs. Vossler said was—was it Miss Vossler or Mrs. Vossler?

Mr. Bechtle: Miss, Your Honor.

The Witness: Miss Vossler.

The Court: You can't consider what Miss Vossler said for the truth of the fact that she had the oil leases, but only for the fact that she told this witness that she had oil leases.

Mr. Singer: May I have an exception, Your Honor?

The Court: All right. I will grant you an exception.

Mr. Bechtle: If Your Honor please, I do think it would be appropriate to indicate to the jury now that that statement does not apply as to defendant's statements that the defendant is presumed to have made to this witness.

The Court: Oh, no. Of course, it doesn't apply to what Mr. Rosenberg said to this witness. That is admissible [fol. 35] for all purposes. Anything that the defendant said Mr. Meierdiercks can testify to freely. Of course, that is admissible, because the defendant is here, but as far as Miss Vossler's statements are concerned, if the government wants her they can bring her here, and you can't treat his statements as to what she said for the truth of the matter asserted, namely, that she owned the oil lease, but merely that she told him that she owned the oil lease. It is evidence of proof of the fact that she said those words.

By the Court:

Q. That is what she said to you, isn't that it, "I own oil leases in New Mexico"?

A: No, sir. She said—I asked her if she owned a specific oil lease in New Mexico.

Q. New Mexico?

A. Yes. She said, "Yes. I have that particular lease."

The Court: That is right. Of course, whether she did or not hasn't been proved, but merely that she said that she owned this oil lease that the witness asked her about.

Proceed.

By Mr. Bechtle:

Q. Well, Mr. Meierdiecks, I wonder if you would continue with your discussion as to what happened. Tell us [fol. 36] what you did as a result of that first meeting with Miss Vossler. What did you do next?

A. Well, I told Miss Vossler that I represented a group of people who were interested in buying that particular lease.

She said, "I have it."

And I said, "By the way"—

Mr. Singer: May it please the Court, I object at this time. The question was, what did the witness do as a result of that first meeting? Now the witness is merely going about describing the first meeting and reiterating statements that were supposedly made by Miss Vossler.

The Court: I overrule your objection. I think the answer is proper.

Mr. Bosta, would you read him what he said and let him continue.

(The answer repeated as follows:

"A. Well, I told Miss Vossler that I represented a group of people who were interested in buying that particular lease.

"She said, 'I have it.'

"And I said, 'By the way'—")

The Witness: I said, "By the way, do you have some other leases?"

And she said, "Yes."

And I said, "Do you mind if I make a notation of the [fol. 37] geographical description, the location of those leases?"

And she gave me the description of the various leases that she had, and I said, "Well, now, getting back to the one that I came here in particular to see you about," I said, "how much do you want for that lease? Would you be interested in selling it?"

She said, "Well, I hadn't considered it." She said, "Of course, I bought it originally to make some money on it," and she said, "why, what is the lease bringing? What is the market price on the lease?"

So I said, "Miss Vossler," I said, "there isn't any particular market for these leases in the term of a market that you have in mind like a stock exchange or something like that." I said, "These leases may be worth a great deal of money to somebody that wants them, somebody that has an idea that there might be oil under them, and then again there are other people that wouldn't pay anything for them."

I said, "Now, my group happens to be interested in this particular lease. They were accumulating a lot of leases in this particular area and they would like to have yours, providing they can buy it at a reasonable price."

I said, "Would you consider \$5 an acre or \$10 an acre?"

I think it was either five or ten. I have forgotten now—[fol. 38] it was a couple of years ago—but it was either five or \$10.

And she said, "Well, I don't know. I don't—I don't think so. Maybe I would. Maybe I would. I am not sure."

I said, "Would \$15 interest you?"

She said, "Well, I think it might."

So I said—"But," she said, "I would like a little time to think it over. I would like maybe a couple of days to think it over and," she said, "I would like to talk to"—I have forgotten what the man's name was, the man that was there in the house, this man that was invalided—and she said, "I would like to talk to him about it."

And I said, "Well, could you let me know in a couple of days?"

So she said, "Yes; I could let you know in a couple of days."

I said, "All right, Mrs. Vossler, I will call you back in a couple of days and see if we can get together," and I left.

Q. Now, right after you left, what happened or where did you go?

A. I walked down to the corner to—the corner of Main Street and Walnut Avenue. Mr. Rosenberg was in the [fol. 39] confectionery store and I told him what had happened.

He said, "All right, fine."

We got in his car and we drove back to New York and we discussed the possibility of doing some business in that particular—with Mrs. Vossler.

Q. Now, did you return to Miss Vossler's home again as you had indicated to her you would?

A. I came back about two days later. I returned there.

Q. And could you tell us what happened at the second meeting?

A. Well, in the meantime Mr.—Mr. Rosenberg had called her and he had gone over the whole situation the same as I had and discussed it with her, and he represented himself to be a third party or another interested buyer, second party, second interested buyer other than myself, and he raised the price, and when I went back two days later she told me that she had had—that she wasn't going to sell for \$15. She said she had had a better price. I think it was either \$20 or \$25.

And I said, "Well, now, Mrs. Vossler," I said, "don't"—I laughed and I said, "Now, don't do that to me." I said, "You know, we run into that quite often where people try to tell us that someone else has tried to outbid us in the meantime, and" I said, "it is only your way of raising the price and getting the price up."

[fol. 40] She said, "No." She said, "I am being honest about it. I did receive a call. A man called me, and," she said, "his name was Mr. Rice." I think, or some other name—I don't know just what it was—"and," she said, "he did offer me \$25."

So I said, "Well, I don't know whether my people would be interested in paying that much money, but I would like to reserve a decision on it, and I will call you back probably tomorrow or the next day and I will let you know whether my company or my people that are interested would pay that much money," and I left again and met Mr. Rosenberg down at the corner, and we went back to New York.

Q. Did you return to Miss Vossler's home, as you have indicated you planned to?

A. Yes. I returned and—

Q. Now, before we get to the return, did anything happen between the second visit and that return, if you recall?

A. Well, Mr. Rosenberg had called her again—

Mr. Singer: I object, Your Honor. There is no foundation whatsoever laid for these alleged phone calls.

Mr. Bechtle: Of course, I think the fact that the defendant said it, Your Honor, is sufficient foundation.

Mr. Singer: There has been no statement that they were made in the presence of the defendant—

[fol. 41] The Court: Yes.

Mr. Singer: —and I don't think the present witness was there.

The Court: That is right.

By the Court:

Q. This phone call which you say that the defendant made after the second visit, were you there when he made the phone call?

A. Yes, sir. He was in the telephone booth in a stationery store down a half block from his hotel and—

Q. That was in New York City?

A. Yes. He wanted me to stand by the phone booth and listen to the conversation so that I would know what—get an idea from his conversation what was transpiring between him and Mrs. Vossler over the telephone.

Q. So that you could hear everything he said on the phone?

A. Yes, sir. I could.

Q. All right.

Then you may tell us what he said on the phone. He was talking to Miss Vossler; is that correct?

A. Yes, sir.

Q. All right. Proceed.

A. Well, he called Mrs. Vossler and he talked to her about the lease and about selling it and the price, and so forth, [fol. 42] and so on, and she had evidently told him—

Mr. Singer: Oh, well, I object to what Mrs. Vossler apparently told him.

The Witness: She—

The Court: Yes. We only want to know what you heard the defendant, Mr. Rosenberg, say over the phone.

The Witness: Yes, sir.

The Court: That is all we want to know.

Now, what was the first thing you can remember he said to her during this phone conversation?

The Witness: Well, he told her—he said, “This is—this is Mr. Rice, and,” he said, “I am calling you back about that lease, and,” he said, “do you want to sell it at that price or don’t you want to sell it at that price?”

And she said—it appeared to me from what the answer he gave her—

The Court: Well, we don’t want what appeared to you. We just want what he said, just what he said.


The Witness: “Well,” he said, “all right, Mrs. Vossler. That is all I can pay. I am sorry.”

By Mr. Bechtle:

Q. And following that call did you return to Miss Vossler’s home on your third visit to East Orange?

A. Yes. I did.

[fol. 43] Q. And could you tell us what happened at the third meeting?

The Court: Well,  wait a minute. There is one thing I didn’t get at this phone conversation.

By the Court:

Q. Did he say who he was? Did you hear him say who he was on the phone?

A. He said it was Mr. Rice:

Q. Mr. Rice?

A. Yes, sir.

The Court: All right.

By Mr. Bechtlé:

Q. Now, Mr. Meierdiercks, could you tell us what transpired between you and Miss Vossler at your third meeting following this phone call that you have just related to us?

A. Well, when I went back at the third meeting Miss Vossler told me that she had had several calls from different people that were interested in the lease and she said that one man had visited her, there had been another man visited her in person other than myself, and he offered to buy the lease, and she said, "They all want to pay more than you want to pay."

So I said, "Well, what was the top price?"

And I think she said, "\$25."

I am not sure at this time.

[fol. 44] And I said, "Well"—she said, "If you can—if you are interested in paying the same price, I would prefer to give it to you, because you were here first, and," she said, "I would keep my bargain with you and I would let you have the lease if you pay the same price that these other people are willing to pay."

So I told her that I would let her know and I left, told her I would have to let her know, I would have to take it up with my company that afternoon or that night, and I left.

Q. Well, what happened next, Mr. Meierdiercks?

A. Well, I believe that it was right the next day that I went back, and that was the day that I was supposed to go and cinch the deal, and I went to the house, and Mrs.—I told Mrs. Vossler that my people agreed, would agree to meet that price, and we figured it out, the amount of leases she had times the money, the price.

By the Court:

Q. Did you say what the price was?

A. Your Honor, I have forgotten what it was right at this moment: I think it was around twenty-five, \$35, something like that.

Q. Somewhere between \$25, \$35?

A. \$35.

[fol. 45] Q. An acre?

A. Yes, sir.

Q. And you computed with her what that would come to in view of the number of acres she had under lease; is that right?

A. Yes, sir.

The Court: All right. Proceed.

By Mr. Bechtle:

Q. Do you recall what the total price was that you agreed to pay her for all the leases?

A. Well, the price that we decided on was \$57,000, some odd amount.

Q. Fifty-seven hundred-some-odd dollars?

A. No—fifty-seven thousand.

Q. Fifty-seven thousand-some-odd dollars?

A. Yes, sir; and when we had arrived at the price, at the sum total, I said to her, "Now, Mrs. Vossler," I said, "there is—of course, you have got a tax problem to consider, and I don't know what tax bracket you are in, but if you are in a high bracket, you own securities, as you have told me you own securities, and so forth, and," I said, "if you are in a high bracket you may have to pay as much as 80 per cent taxes on the profit of this transaction."

So she said, "That is right, too." She said, "I will have [fol. 46] to pay a lot of tax."

"Well," I said, "what are you going to do about it?"

"Well," she said, "I don't know." She said, "Is there any"—

I said, "Well, there is a legal way of putting this deal through so that you won't have to pay a personal tax, which is high."

And she said, "Well, I would be glad to know about it."

And I said, "Well, if it is put through as an oil deal, the oil companies have an exemption of 27½ per cent on leases, and" I said, "this deal could be put through as an oil company deal and we could work it out so that you would only have to pay about 10 per cent."

And she said, "Well, that would be mighty fine." She said, "I would like to. I would like to do that. I would like to know about it." And she said, "Can I get into any trouble?"

I said, "No; you can't get into any trouble, because it will be put through the company as an oil deal, as an oil company deal instead of a personal deal."

So we worked it out, and I said, "Now, the thing is that you will have to put up in advance the \$5700 which will be [fol. 47] the 10 per cent of the \$57,000 some odd. You would have to put that up in advance, give it to us, and we pay it, and then we reimburse you by giving you the total price plus the money that you put up in advance."

She said, "Well, that will be all right." She said, "I can do that, but," she said, "I don't"—

I said, "Have you got the—do you have the \$5700?"

She said, "Yes." She said, "I can get the \$5700." She said, "I don't have it here." She said, "I used to work in the Customs House in Philadelphia and I have never transferred my bank account. It is in the Girard Trust Company."

"Well," I said, "that is all right. We can go down to the Girard Trust Company in Philadelphia tomorrow morning and you can draw the cash out and let me have it, and that will complete the transaction."

So she said, "All right. I will do that."

And I made arrangements to meet her the following morning at the Pennsylvania Railroad Station at Newark—or at her home to take her to the Pennsylvania Railroad Station and go to Philadelphia.

Q. Well, now, Mr. Meierdiercks, up to this point was Mr. Rosenberg aware of what was going on between you and [fol. 48] Miss Vossler?

A. Yes, sir. I reported—

Mr. Singer: May it please the Court, that is a leading question.

The Court: All right. I overrule your objection. Proceed.

By Mr. Bechtle:

Q. You may answer, Mr. Meierdiercks.

A. Yes. Mr. Rosenberg—I had to report back to him every move that I made and as carefully as I could remember it or as exactly as I could remember it, as much of Mrs. Vossler's conversation as I could remember, and which I did.

Q. Yes, sir.

Now, one more thing. Was there ever any real intent to purchase oil leases from Miss Vossler for \$57,000?

A. No, sir.

Q. What was the real intent behind this plan?

A. The intent was to get the \$5700.

Q. All right.

Now, Mr. Meierdiercks, will you tell us what happened after you left Miss Vossler when you indicated to her that you would meet her to go to Philadelphia. In other words, did you meet her the next day as planned?

[fol. 49] A. Yes. The following day—

The Court: Well, now, wait a minute. I think that is a good place to adjourn, and we will proceed from there tomorrow morning.

Mr. Bechtle: Very well, sir. I would like to have the record now show that I am now going to turn over to Mr. Singer Exhibits C-1 and C-2 and also Exhibits G-8, 9 and 10, which are the exhibits that were discussed in your presence early this afternoon that you indicated that we should let him examine or have overnight.

[fol. 50] The Court: I will see you tomorrow morning.

First, let us go ahead with these documents.

Do you have these documents?

Mr. Bechtle: I have, sir.

The Court: Then hand them over.

Mr. Bechtle: C-2, C-1.

The Court: C-2 is the statement made by Mr. Meierdiercks to the Federal Bureau of Investigation; is that right?

Mr. Bechtle: That is correct, sir.

[fol. 51] The Court: C-1 is the transcript of Mr. Meierdiercks' testimony before the Grand Jury.

Mr. Bechtle: That is correct, sir.

[fol. 52]

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

Before Hon. Francis L. Van Dusen, J., and a Jury.

Transcript of Testimony—October 2, 1957

Philadelphia, Pa.

[fol. 53] The Court: Now, would you proceed. What [fol. 54] were you going to say?

The Witness: Well, I told Mr. Rosenberg of the arrangements for the following day to meet Mrs. Vossler—Miss Vossler the following day, and he said that I should go over on the train and take a taxi from the station—

Mr. Singer: If the Court please, once again I must object as to the hearsay nature of the testimony that is being presented.

Mr. Bechtle: Of course, this is a conspiracy case, too, Your Honor, and I think there is enough evidence in here as to the agreement to warrant Mr. Meierdiercks testifying what the understandings were between the so far alleged members of this conspiracy.

The Court: All right. Now, let me just hear exactly what he said. Read it back, Mr. Blumberg.

(The answer was repeated by the reporter.)

The Court: And you object to that. I overrule the objection. Proceed. He said—

The Witness: He said to take a taxi from the station, meet her at her house, and bring her back to the station where he would be waiting for me; that he was going to

drive out with another man in his car, and that he would meet me in the station at the information booth; that I was [fol. 55] to—not to say anything to him, but to just walk in with Mrs. Vossler, which I did. I followed those instructions to the letter.

And when I got into the station with Mrs. Vossler, Mr. Rosenberg was standing fairly close to the ticket window, and he stepped away and I stepped up to the window with Mrs. Vossler and bought the tickets to go to Philadelphia.

Mr. Rosenberg had told me that he would be on the train where he could see Mrs. Vossler and myself, and I got on the train with Mrs. Vossler and I looked in the car in back. Mr. Rosenberg was sitting in one of the front seats in that car. Mrs. Vossler and myself, we sat in the—toward the rear of the car in front, and I could turn around and see Mr. Rosenberg and he could see me at all times.

The Court: What station was that?

The Witness: Pennsylvania Railroad Station, Newark.

The Court: Pennsylvania Railroad Station, Newark?

The Witness: Yes, sir.

By Mr. Bechtle:

Q. Is that Newark?

A. Newark, New Jersey.

[fol. 56] Q. Yes, sir.

A. We—

Q. Now, when you got to Philadelphia, what is the first thing that you did?

A. Well, we proceeded to Philadelphia on the train, and Mrs. Vossler—I asked Mrs. Vossler during the trip if she would object to—if she would excuse me, and she said yes. And I got up and left her and went in the back car and talked to Mr. Rosenberg.

And I said, "Have you got the receipt with you that Mrs. Vossler may ask for?"

He said, "Well, I have the blanks. I haven't made them out, but," he said, "I will take care of that later."

So I went back and I sat down with Mrs. Vossler. We rode to Philadelphia, and Mrs. Vossler and myself, we proceeded to the Girard Trust Company and went in to the information desk.

And Mrs. Vössler identified herself and told the young lady that she wanted a certified check for \$5700, and that she had not had a recent statement, that she would like to know what her balance was before they made out the check.

Mr. Rosenberg was standing in another part of the bank. [fol. 57] I could see him from where I was sitting. And—just standing there by the entrance. And the young lady left and came back with a little slip of paper and showed it to Miss Vössler, and Miss Vössler said, "Well, that is all right. Will you get the certified check for me?"

So the young lady did go to the cashier to get the \$5700 check. And the cashier said—came back and—

Mr. Singer: I object to that.

The Court: I will sustain the objection. I think it would be best if you did not tell us what the cashier said, but just what she did. In other words, the cashier came back with the check, is that right?

The Witness: He came back with a suggestion to her. She asked for cash, and the teller came back and said, "You don't want to carry cash. Don't you want a certified check?"

The Court: I see.

The Witness: "Would that be all right? That is better protection for you."

And she said, "Yes," that she would like to have it made out to herself—

Mr. Singer: If the Court please, this is still giving the verbatim description.

[fol. 58] The Court: That is perfectly all right. What he has said is relevant for the accuracy of the words stated, and he may be cross-examined on those words. He has not said anything which is irrelevant under those principles which permit a witness to state words which are said to him, but not for the truth of the matter asserted in the words. You cannot take this as evidence as to how much Mrs. Vössler had in the bank. We do not care about that. All we are interested in is the words that were said, and I overrule the objection, and you are protected on the record.

Now, therefore, I take it that eventually a certified check was produced, is that right?

The Witness: A certified check was produced to Mrs. Vossler's order by the cashier, and he had instructed her that unless she was going to give it to somebody right away, she should be very careful not to lose it, because it was cashable, it was a negotiable paper. And she said, "Well, that will be all right." And she put it in her bag, and we left.

The Court: I see.

By Mr. Bechtle:

Q. Just a minute, Mr. Meierdiercks, please.

[fol. 59] Mr. Bechtle: Mark this G-1.

(A certified check was marked Exhibit G-1 for identification.)

The Court: What Government's exhibit is that?

Mr. Bechtle: I was just about to say, Your Honor, that I have just handed Mr. Meierdiercks Exhibit G-1.

By Mr. Bechtle:

Q. Mr. Meierdiercks, could you tell us what that appears to be?

A. This is a check drawn to Florence M. Vossler for \$5760 on the Girard Trust Company-Corn Exchange Bank in Philadelphia, endorsed by Mrs. Vossler, and second endorsement by a Mr. Parker, and a third endorsement by New Mexico Oil & Gas Lease Exchange, Mr. Bowles.

Q. What is the date on the check, Mr. Meierdiercks?

A. The date of this check is January 19, 1955.

Q. Is that the date that you went to the bank with Miss Vossler?

A. Yes, it is, sir.

Q. In other words, the check was made out the same day that you were there?

A. That's right.

The Court: Now, is that the check you have been telling us about?

[fol. 60] The Witness: That is right, sir.

By Mr. Bechtle:

Q. Now, one more thing, Mr. Meierdiercks. You did mention before you saw the check something to the effect that you were going to get, or planned to get some \$5700. Now, am I correct in saying that this check represents the amount that you did intend to get; that is, \$5,760?

A. Yes. The total payment was \$57,600, and this was 10 per cent of that amount.

Q. And this was the—

A. \$5,760. This is the check as arranged between Mrs. Vossler and myself.

Q. Well, after Mrs. Vossler received the check from the bank, what happened then?

A. We left the bank and we went to the Bellevue-Stratford Hotel.

Q. Did you see Mr. Rosenberg?

A. I saw Mr. Rosenberg in the lobby shortly after we got in and sat down, I saw Mr. Rosenberg in another part of the lobby.

Q. Up to this point, Mr. Meierdiercks, were Miss Vossler, yourself, and Mr. Rosenberg ever together? I mean, in each other's presence?

A. Between the time that Miss Vossler and myself left [fol. 61] the train, or left the Girard Trust Company?

Q. At any time up to now, were the three of you ever together in each other's presence?

A. No, sir.

Q. Was it supposed to be that way?

A. Yes, sir.

Q. All right. Continue, Mr. Meierdiercks.

A. Well, Mrs. Vossler sat down at a little writing desk, and I sat down with her.

The Court: This is in the Bellevue-Stratford?

The Witness: In the Bellevue-Stratford. And she took out the check and proceeded to give it to me and then said, "Have you a receipt for this money?" She said, "This is a negotiable check, and if you are going to mail it or carry it, if you lose it, the banker warned me that it is negotiable and someone else might cash it."

And I said, "No, I don't have a receipt with me." I said, "The company will send you a receipt."

And she said, "Well, I don't want to surrender it—I won't surrender the check without a receipt. I won't give you the check."

Well, I said, "I will see if I can get a blank check—a blank receipt."

[fol. 62] So I got up and went to the men's room, and Mr. Rosenberg came in right in back of me, and I said, "Mrs. Vossler won't give me the check without a receipt."

He took the receipt out of his pocket, leaned up against the wall, and wrote the receipt out for the \$5,760, and I went back and got the check from Mrs. Vossler and gave her the receipt.

I then put the check in an envelope wrapped up in note paper, I scratched a note on the paper, and proceeded to mail the check to some distant city. I think it was either Dallas or Houston, Texas.

Mr. Bechtle: Now, would you wait just a moment, Mr. Meierdiercks, please.

This is G-2.

(Receipt dated January 19, 1957, was marked Exhibit G-2 for identification.)

By Mr. Bechtle:

Q. I now hand you Exhibit G-2 and ask you if you will tell us what that is.

Mr. Singer: Or what it purports to be.

The Witness: This is a receipt—

Mr. Bechtle: Well, what it is is all right. You can tell us what it is, if you know.

[fol. 63] The Witness: This is a receipt dated January 19, 1957, plain, ordinary notebook type of receipt that you can buy in a stationery store. It is made out to Mrs.—or, Miss Florence Vossler for \$5,760, and it is signed Chester LeRoy, and in the lower left-hand corner is the amount, \$5,760.

In my handwriting—this handwriting is not mine (indicating)—but in my handwriting is written, "Gulf Production Company," which was put in there at the sug-

gestion of Mrs. Vessler after she read the receipt, also on the back of the receipt the numbers identifying the leases that were to be purchased, lease No. 02890, 029071, 028251.

By the Court:

Q. And in whose handwriting are those numbers on the back?

A. The handwriting on the back is mine.

Q. Did she ask you to put the numbers on the back as well as to write this "Gulf Production Company" on the front over the name of Chester LeRoy?

A. Yes, sir. She did.

Q. In other words, is that the receipt that you have told us was made out by Mr. Rosenberg, the defendant?

A. Yes, sir. It is.

Q. In the men's room in the Bellevue Stratford Hotel?

A. Yes, sir. It is.

[fol. 64] Q. And then do I understand when you got back to Miss Vessler she said, "I want the name of this company you tell me you represent in there"?

A. Yes, sir.

Q. And so you wrote in—

A. I just wrote in the name of the first oil company that came to my mind.

Q. And then she also asked you to put the lease numbers on the back?

A. Yes, sir.

Q. That was her idea, not yours?

A. Yes, sir.

Q. As far as you can remember?

A. As far as I can remember—

By Mr. Bechtle:

Q. Now, Mr. Meierdiercks—

The Court: Wait a minute.

The Witness: As far as I can remember, it is, sir.

Mr. Bechtle: I am sorry, sir.

By the Court:

Q. In any event, those two things are in your handwriting and everything else on the receipt is in Mr. Rosenberg's handwriting; is that correct?

[fol. 65] A. I saw him write that; yes, sir.

Q. Everything except the two things that you have mentioned?

A. Well, there are some government notations on here, G-2 and G—.

Q. Yes.

Well, those are—

A. Identifying marks.

Q. Yes.

These marks, the jury will understand, G-2, and the number down here at the bottom, which is G-2, is the number of this case, and, of course, our court reporter wrote those on the top and bottom, but I am talking about the body of the receipt within the solid black lines, that writing. That writing is all Mr. Rosenberg's except for the words, "Gulf Production Co.," is that correct?

A. Yes, sir.

Mr. Singer: May I see that slip, sir?

The Court: Yes. You may.

Mr. Singer: May it please the Court, I think it should be stated in all fairness to the defendant that the statement as to this being Rosenberg's signature is merely that of the witness and not of the court.

The Court: Oh, that is right. There is no question [fol. 66] about it.

Mr. Singer: The witness merely testified that this is Mr. Rosenberg's handwriting.

The Court: I asked him that, and he is telling us that that is his testimony, certainly. I don't know who was there. I wasn't in the Bellevue Stratford.

By Mr. Bechtle:

Q. Mr. Meierdiercks, you mentioned the name, "Chester LeRoy." You say that appears on the receipt?

A. Yes, sir.

Q. I wonder if you could explain to us who that person is.

A. Well, I was supposed to be—I had represented myself as Chester LeRoy; so naturally the receipt wouldn't be in my handwriting. Mr. Rosenberg wrote the receipt out and put my name, signed my name to it.

Q. Now, had you used the name "Chester LeRoy" from the very start of this thing?

A. Yes, sir. I did.

Q. Did Miss Vossler ever know you up to this point as anything other than Chester LeRoy?

A. No, sir. She didn't.

Q. Well, after you gave her the receipt, what happened then?

A. Well, I—she gave me the check and I gave her the receipt—that consummated our business—and I asked her [fol. 67] to excuse me a minute, and I put the check into the note paper, enclosed it in the envelope, sealed it, put a stamp on it, and I had another envelope in my pocket, a similar envelope, large envelope.

I went over to the mailbox, and instead of mailing the check out, I put the other envelope in the mailbox, the empty one with no address on it, and I put this other check in my pocket.

Then I walked around to the phone booth, and Mr. Rosenberg was around the phone booth, and we were just out of the vision—out of Miss Vossler's vision. The phone booths are over in the corner, and these writing desks that we were sitting at were on the other side of the phone booths, the other side of the phone station, and I was able to talk to Mr. Rosenberg there at the phone booths, and I said, "I have the check."

And he said, "Well, what are we going to do with the check now?"

Q. Do you know why he said that, Mr. Meierdiercks? What was the reason for that question?

A. Well, he wanted to get—

Mr. Singer: I object, Your Honor.

Mr. Bechtle: Well, if he knows, Your Honor, I think he can testify. If he doesn't know, he merely says he [fol. 68] doesn't know.

The Court: Well, I don't think that is a proper question. I sustain the objection. He can't tell what is in somebody's mind.

By the Court:

Q. You went over to the phone booth and you had in your pocket an envelope with a stamp on it which you had made out in Miss Vossler's presence?

A. Yes, sir.

Q. As if you were going to mail it?

A. Yes, sir.

Q. But you had not, in fact, mailed the envelope?

A. No, sir.

Q. Now, what happened? You were standing there and he was there;

A. Well, Mr. Rosenberg said, "We have got to get the check cashed."

And I said, "Well, you call the New Mexico Oil and Gas Lease Exchange at Washington and talk to Mr. Bowles and tell him that you want to buy a lease, a New Mexico oil lease, and you can go down there and he will give you the lease and cash the check for you and give you the difference in cash."

He called Mr. Bowles and made an appointment with [fol. 69] him and left almost immediately. I would say within a few minutes he left, and I went back—

Mr. Singer: May it please the Court, if the witness is going to testify as to any alleged telephone conversation, I believe that the attorney for the government should first lay the proper groundwork to see whether or not he did actually hear any conversations, whether they were made in his presence, and so forth.

By the Court:

Q. Well, I understand that your testimony is that you heard this conversation on the phone; is that right or isn't it, Mr. Meierdiercks?

A. Mr.—Mr. Rosenberg was sitting in the phone booth with the door open. He called Washington, talked to Mr. Bowles about buying a lease.

Mr. Bowles said, "I am in business! I am in the lease business."

Mr. Singer: Well, he couldn't possibly know that.

The Court: You don't know. That will be stricken.

The Witness: Well—

By the Court:

Q. In other words, all we are interested in is could you [fol. 70] hear everything he said over the phone while he was placing this call to Washington?

A. I could hear everything that he said.

Q. Yes. That is all we are interested in, what he said. We don't want what the other person said. You couldn't hear that, could you?

A. No—but he, Mr. Rosenberg, told me that the—that he had made the appointment and was leaving to go to Washington.

Q. Yes. That is what he said?

A. Yes, sir.

Q. I understand. That is what he said. That is what we want to know.

A. Yes, sir.

Q. You heard him ask the operator to get Washington, did you, the New Mexico Oil and Gas Lease?

A. Yes, sir.

Q. Is that the name of it?

A. Yes, sir.

Q. Company.

And you heard him ask for a Mr. Bowles—is that the name?

A. Bowles.

Q. Bowles?

A. B-o-w-l-e-s.

[fol. 71] Q. Bowles—B-o-w-l-e-s?

A. B-o-w-l-e-s.

Q. And then you heard him say to somebody on the phone what you have told us about—

A. Yes, sir.

Q. —buying a gas lease?

A. Yes, sir.

Q. And having a check to pay for it?

A. Yes, sir.

Q. And then he told you that he was going to Washington right away; is that correct?

A. That Mr. Bowles said he could take care of it.

Q. That Mr. Bowles said he could take care of it?

A. Yes, sir.

Q. Mr. Rosenberg said that to you?

A. Yes, sir. He did.

Q. You understand all we want you to tell us is exactly what you heard Mr. Rosenberg say.

A. Yes, sir.

Q. All right. Proceed. Now, what did Mr. Rosenberg do after this phone call was completed?

A. Well, he left for Washington almost—at least I went and got Miss Vossler, and we were all—all three of us were moving about that hotel at the same time. Mrs. Vossler and [fol. 72] myself were leaving for the—to go around to Bookbinder's to have lunch. Mr. Rosenberg was right behind us on the stairway at the top of the steps. As I turned around and asked the doorman how to get to Bookbinder's—and he said, "It is just around the corner"—I saw Mr. Rosenberg leave then and I didn't see him any more that day.

By Mr. Bechtle:

Q. What did you do then?

A. I took Mrs. Vossler around—we had a lobster dinner in Bookbinder's, and when we were finished I told her that I was going to Baltimore, and she said that she was going to—back to Jersey.

So I took her to Penn Station and I put her on the train for Newark, and I waited in the station for about—I was going to Baltimore, and I waited in the station for about an hour, and I made up my mind that I would get on the train and go to New York. There was a train pulling out for New York, and I got on it and went to New York and gave up the Baltimore trip.

Q. Where did you go to in New York?

A. I went through to New York.

Q. Well, where in New York?

A. Well, when I got into the station I called the office that I was working in and told him that I had just gotten [fol. 73] in from Philadelphia, and I made a date with an associate of mine in the office, Mr. Gorman, and we met in my apartment, and that was—I waited around most of the evening for a telephone call from Mr. Rosenberg, and about 6—I would say 6 or 7 o'clock, somewhere in there—I got the call from Mr. Rosenberg.

He said that he was unable to cash the check, that he had gotten there too late, and—and that he would cash it—they were going into the bank in the morning, following morning to cash the check, and that he would call me again on his arrival in New York.

The next day about 4:30 or 5 o'clock Mr. Rosenberg called and said, "I am on the Turnpike. I have the money and I would like to proceed to Boston without going off the Turnpike, the Jersey Turnpike. Can you meet me at the New York—the Lincoln Tunnel exit?"

And I said, "Well, I can't meet you, because I have a previous engagement; however, I will ask Harry Gorman to meet you there and let him give you my money—my share of my money."

Q. And did you ask Harry Gorman to do that?

A. I did.

Q. And as far as you know did he leave the office to keep this appointment?

[fol. 74] A. Yes. He drove my car over to—I think it is Exit 16 or 17.

Mr. Singer: Well, I will object to that, Your Honor.

The Court: Yes. That is right.

By the Court:

Q. You don't know what he did except that he left the office?

A. I know that he came back with the money.

Q. Well, he came back with the money?

A. Yes, sir.

By Mr. Bechtle:

Q. And how much money did he bring back?

A. He gave me approximately eleven or \$1200. I was supposed to get about \$1800.

Q. Did he have any explanation of why—well, I am sorry. You need not answer what he said.

Now, Mr. Meierdiercks, as far as you know, is that the completion of the deal as such?

A. Yes, sir. That was the completion of the deal.

Q. Now, from the start of this until the end of this that you have just testified to, whom did you take your instructions from, if you took instructions from anyone?

A. Mr. Rosenberg.

[fol. 75] Q. Did you take instructions from anyone else?

A. No, sir.

Mr. Singer: May it please the Court, I feel that this particular line of questioning is definitely leading, directing the witness what to answer to.

The Court: Well, when he asks the first question along the line, I suggest you object. We have already had the answers.

I will overrule your objection at this time.

By Mr. Bechtle:

Q. Mr. Meierdiercks, aside from yourself and Mr. Rosenberg, was there anyone else in on the scheme, if you know?

A. Well, only on one instance did I see the man, but Mr. Rosenberg had identified him to me, as to who he was and what he was—not as to who he was, but what his part in the scheme of things would be, and that was that he was to go in on one or two occasions to see Mrs. Vossler, Miss Vossler, and make a bid—

Mr. Singer: May it please the Court, the witness was asked to testify as to whether or not anyone else was involved, not to go into detail as to the actual mechanics.

The Court: Well, I think he can explain his answer, I will overrule your objection.

[fol. 76] By the Court:

Q. As I understand, your testimony is that there was a third person participating in this scheme, according to what Mr. Rosenberg told you?

A. Yes, sir. Mr. Rosenberg—he said that the man on one particular day—he had checked the man into a hotel in Newark, either the Robert Treat or another one—I have forgotten the name of it—and the man was waiting down there for instructions from him, and Mr. Rosenberg and I went over to Jersey, and this man was in the hotel in Newark, and Mr. Rosenberg said to me, “Well, now, I have got to go down to Newark to pick this man up; you wait in the lunchwagon on Main Street until I pick you up,” and I would say that I waited there close to three hours, and Mr. Rosenberg drove the man down to—

Q. Well, now, wait a minute. All we want to know is what he told you.

A. Well, he told—

Q. Is this what Mr. Rosenberg told you?

A. Yes, sir. Mr. Rosenberg told me that he would drive the man—he came around to the lunchwagon while I was sitting there during the—towards the end of those three hours, and he said to me, “The man is through; I am going to have to drive him down to Newark, and I will come back [fol. 77] and pick you up. I don’t want you to meet him and I don’t want him to meet you,” and he said, “I am going to leave now.”

So I watched him as he left, and I saw him get in this car where this man was, and I got just a faint description of the man—I mean, faint view of him. I couldn’t see who he was.

Q. But you did see him in Mr. Rosenberg’s car on this one occasion?

A. Yes, sir.

By Mr. Bechtle:

Q. Mr. Meierdiercks, one more thing:

During the period of time that you knew Mr. Rosenberg, did you know or did he tell you what business he was in?

A. Well, the only business that I ever knew Mr. Rosenberg to be associated with was the oil-lease business.

Mr. Bechtle: Thank you, Mr. Meierdiercks.

[fol. 78] COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Singer: May it please the Court, there is one additional statement that I should like to make which I think should be properly made in the absence of the jury.

It is my recollection that Meierdiercks testified or admitted—at the prior hearing this is—to giving more than one statement to the F. B. I., and I believe he was interrogated on more than one occasion, and I have received merely one statement. I believe I am entitled to all the statements that this individual made to the F. B. I.

The Court: Well—

Mr. Bechtle: Your Honor, may I say one thing? I think it is very pertinent right here. I think we may as well start right with this witness, because we have other witnesses, and I think we will have the same question. Maybe with this little break we can talk about this.

The recent statute provides that a defense counsel in a criminal case such as this is—has the benefit of this turnover proceeding. These types of statements that he is entitled to is a written statement that he has signed, approved, or otherwise accepted, or a statement that has been taken simultaneously by a stenographer and which he has approved or accepted.

Now, the F. B. I., as I know that you know, interviewed many, many people many times. They will interview some—[fol. 79] one, take the interview down, write it on the report. This statement is never shown to the witness. He never signs it. He never approves it or accepts it, the agent does, and if the agent takes the stand that type of statement, if relevant, would be probably in the category of subject to turnover; but, now, if Mr. Meierdiercks, for example, was interviewed seven times, he gave one written statement that he signed. If those statements that he made at any other time were merely later recopied by an agent in his own words in his report, which he, the agent,

approved and turned over to his superior, possibly that F. B. I. report would be subject to turnover, but certainly not Mr. Meierdiercks' oral statement to the agent. He did not approve or accept anything, and I will take the stand right now in this case that we have one statement that Mr. Meierdiercks signed, read over, initialed and approved as being correct, and that statement is the statement that is identified as C-2, and it is a statement that Mr. Singer has had for over twelve hours. It is a short statement, and I am confident that it is consistent with what Mr. Meierdiercks testified to.

The Court: Well, we don't want to go into that.

Mr. Bechtle: I know that, but I just want the—
[fol. 80] The Court: Well, is it your statement to the Court, Mr. Bechtle, that the only statements that you have are the statement which you have turned over to Mr. Singer and that you do have some statements by F. B. I. agents which purport to summarize—

Mr. Bechtle: Let me say this—

The Court: —other things that Mr. Meierdiercks said to them; is that right?

Mr. Bechtle: I will say this, sir. I am sure that there are such F. B. I. reports in my file. Now, I don't know. I am sure that there are. I mean, I am just taking the representative case. They interview several times, get a little bit here, get a little bit there, and following that they will get a complete statement. I am confident that there is some type of summary by an agent which the agent approved.

The Court: I am talking about the summary of what he said, not summary of the whole situation.

Mr. Bechtle: Well, if you would permit me five minutes to see the agent on the case, I could, I think, clarify that. Your Honor.

The Court: All right.

(Short recess.)

Mr. Bechtle: Now, if Your Honor please, I understand that Mr. Meierdiercks was interviewed two or three times [fol. 81] about something relative to the case, naturally.

however, the agent prepared his report and submitted it in accordance with his normal administrative procedures. Mr. Meierdiercks did not see the statement. He did not sign it, did not approve it. He did not accept it as being true. This is the agent's summary of the result of his interview, and I say again, just so the record is very clear, that with the exception of Exhibit C-2 there are no statements by this witness that he has signed or approved as being correct.

The Court: All right.

Now, I think that you had better turn over to me these agent's reports which were made after conferences with Mr. Meierdiercks, and I will go over them, and if I find that they are in effect the recording of what he said, I can delete those portions of them, if they contain other material which is not relevant to his testimony on direct examination here, and turn them over to the defendant's counsel.

Will you proceed to get these together?

Mr. Bechtle: I certainly will do that.

Mr. Murphy, will you come up here, please.

Mr. Singer: May it please the Court, there are; a few words in that respect that I think should be stated at this time. I see nowhere in the text of the approved bill whereby the statement must be so accepted by the testifying individual as reflected by Mr. Bechtle. What they are doing is putting the government in the position that if they have seven statements they give the one that they consider the most beneficial to their case. I feel—

The Court: Not at all. It says here that you are only entitled to a written statement of the witness signed or otherwise accepted or approved by him, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement.

Now, obviously this type of statement doesn't fall within any of those descriptions, but in order to lean over backwards I am going to look at them, and if I feel that it is fair for the defendant to have them, you can be sure they will be given to you.

If you will look at Subsection (e) of the bill you will see that it very—

Mr. Singer: I am looking at that.

The Court: —specifically states that it has got to be in effect a recording of exactly what he said. Now, that doesn't meet with the description of the statements which the U. S. Attorney has made here.

Mr. Singer: May it please the Court, then there is only one thing that I have to add at this time, that I feel [fol. 83] that that section of this Act that tends to limit procedurally or otherwise the scope of the Jencks decision is unconstitutional as to that section, in that it is merely a legislative attempt to modify, alter, change or completely do away with a decision that was rendered by the Supreme Court of the United States, and I feel that any attempt by the Legislature is a dangerous precedent to be established, and I feel that that matter is properly before the Court on this very issue at this time.

The Court: Well, I will take that argument into consideration. That is a perfectly proper argument.

Now, I will read over these statements with that in mind, and I take it you will be in your office so that I can call you there and make these available to you, if I find that you are entitled to them; is that right? Will you be available, then, in your office?

Mr. Singer: I will be at my office, Your Honor.

The Court: All right. Fine. You might as well leave now so you will get the maximum time—

Mr. Bechtle: Thank you, Your Honor.

The Court: —and I will have these statements marked by the reporter as soon as the F. B. I. agent can find them.

[fol. 84] The Court: The documents mentioned in my letter, which was delivered to Mr. Singer's office shortly after noon today; namely, C-5 and C-6, except to the extent that C-6 was enclosed in the letter, have been placed in an envelope which the reporter has, and I am now going to add to the record as C-7 the copy of the letter delivered to Mr. Singer at 12:19 P.M. today.

(Carbon copy of the letter to Mr. Singer from the Court was marked Exhibit C-7.)

[fol. 85] Mr. Singer: I understand that. Then I think it is necessary for me at this time to ask Your Honor's ruling as to these various other documents that the F. B. I. has or may have in reference to Meierdiercks, because I would have something to say in answer to that.

The Court: Well, I made my ruling. You understand that. I have given you the documents in the letter.

Mr. Singer: That is true, Your Honor, and I feel that I should voice at this time an objection on the basis that we did not receive the entire file that the F. B. I. had as [fol. 86] to statements made by Meierdiercks concerning this particular action, and I feel that under the decisions of the United States Supreme Court we are entitled to full disclosure as to all statements made by a witness relative to this particular action that is pending before this court, and that any attempt by the court to modify or limit this source of information on the basis of the new ruling that was recently enacted by the legislature is an unconstitutional interference with the judicial functions of the court and a dangerous precedent to be followed.

The Court: You have already made that clear, and everything that the United States Attorney says the F. B. I. has has either been given to you or put in the envelope which the reporter has, which contains the balance of C-5 and C-6 that has not been furnished you. So that is as much as I can do. I think that the Jencks case, as well as the statute, both say that you are only entitled to material which is relevant to the direct examination testimony of the witness, and that is the basis on which I have excluded the material that is in the envelope.

Mr. Singer: May I have an exception to that, Your [fol. 87] Honor?

The Court: Sure.

Mr. Singer: Thank you.

[fol. 88] Testimony of C. K. Meierdiercks—cross

Q. You previously stated that upon being interrogated by the Federal Bureau of Investigation in reference to your own arrest—this was in New York, January of 1955—that you did not recall exactly what was stated at that time because it involved you personally and that you were upset and you were under the pressure of being under arrest; is that correct?

A. Partly that and partly because it is a long time ago, [fol. 89] and I don't remember whether I was really asked that question, that particular question, or what questions I was asked. I would have to have the statement to refresh my memory as to whether I was asked the question.

Q. I am merely asking whether you made the statements. You don't know? Is that your answer?

A. I don't know if I was asked the question.

Q. At the time that this particular statement was propounded by the Federal Bureau of Investigation—now, is this a statement or is this the result of interrogation?

A. That is the statement.

Q. So that you weren't asked questions then?

A. Yes. I was asked questions. Where did you go from here? What did you do after that? Whom did you see there? And you know as well as I do what—

Q. Mr. Meierdiercks, you can answer my questions by yes and no. Either this is a statement that you made or else this is a work product of an interrogation by the Federal Bureau of Investigation. Now, did they ask you questions and then give answers or did you sit down and make a statement?

A. They asked me what I did then, and I gave it to them in the form of a statement, and after each thing they would say: Well, what did you do then? And I gave it to them in the form of a statement. They would naturally [fol. 90] lead—were drawing me out, because I was hesitant in making the statement.

By the Court:

Q. Well, you told us that, sir—

A. That is right.

Q. —that you didn't sit down and write this out.

A. That is right.

Q. That was their product. They asked you a lot of questions?

A. Yes.

Q. And then as I understand it one of them sat down and wrote that out in their handwriting?

A. They were trying to get the truth of the whole thing; yes, sir.

Q. So that you didn't just sit down and write that out?

A. No, sir.

Q. Somebody else wrote it out after questioning you; isn't that right?

A. Yes, sir. I am not the author of that. I signed the statement to be the truth.

[fol. 91]

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

Transcript of Testimony—October 3, 1957

Before Hon. Francis L. Van Dusen, J., and a Jury.

Philadelphia, Pa.

[fol. 92] ° Redirect examination.

By Mr. Bechtle:

Q. Mr. Meierdiercks, you were shown an FBI agent's summary of what you were supposed to have said sometime in February, 1955, this morning. I think you were shown—that is Defendant's Exhibit 12.

[fol. 93] A. Yes, sir.

Q. Do you recall reading that?

A. Yes, I do.

Q. All right. Now, at that discussion between yourself and the agent, did you tell the truth?

A. I did, sir, yes, sir.

Q. Now, there is another FBI statement—

A. With one exception.

Q. Yes, sir.

A. The only time that I did not tell the truth was when I told the agent that I didn't know anything about Mrs. Vossler or about this case.

Q. At that time you denied—

A. I denied.

Q. —the allegation?

A. A general denial.

Q. But aside from that, did you tell the truth?

A. Yes, sir.

The Court: In other words, at that first questioning when you were arrested, you denied taking any part in this transaction?

The Witness: Yes, sir.

The Court: But that the other things you told the agent were true?

[fol. 94] The Witness: Yes, sir.

The Court: All right.

By Mr. Bechtle:

Q. Now, there has also been shown to you an FBI signed statement; that is, a statement signed by you. I think it comprises ten pages, and it is marked Exhibit C-2.

The Court: Well, show it to him now. Let us be sure he understands. I think it is back here, or maybe Mr. Singer has it. Do you have the C-2, the handwritten statement?

Mr. Singer: Yes, Your Honor.

By Mr. Bechtle:

Q. That is that statement I am referring to.

The Court: That is the statement of May, 1955.

The Witness: Yes, sir.

By Mr. Bechtle:

Q. Now, when you gave the information that was later the substance of that statement which you signed, did you tell the truth then?

A. Did you ask me did I tell the truth in this statement?

Q. Yes.

The Court: Yes.

The Witness: Yes, I did.

By Mr. Bechtle:

[fol. 95] Q. Now, you were also shown some Grand Jury notes of testimony, and which I think you read this morning before you came to court, and that is identified as Exhibit C-2.

The Court: C-1.

Mr. Bechtle: C-1. I am sorry.

The Court: Show it to him now.

Mr. Bechtle: I am about to get it, Your Honor.

The Witness: In this statement there was only one error that I can recollect, and that was—

By Mr. Bechtle:

Q. You are now talking about C-2?

A. C-2. I said I received \$1600. I hadn't received the \$1600.

Q. Very well. Now, regarding the Grand Jury testimony or Exhibit C-1, when you were asked the questions by Mr. Lees, did you tell the truth?

A. I did, sir.

Q. Now, there has been reference also to prior testimony that you gave a year ago, in June of 1956.

A. Yes, sir.

Q. And you were a witness then?

A. Yes, sir.

Q. Mr. Lees again questioned you under oath.

A. Yes, sir.

[fol. 96] Q. Did you tell the truth then?

A. I did, sir, to the best of my ability.

Q. Now, getting back to the original FBI summary of February, 1955, when is the first time that you ever saw that piece of paper, that summary which is Defendant's Exhibit 12?

A. Just a few minutes ago.

Q. You had never seen it before now?

A. No, sir.

[fol. 97] FLORENCE M. VOSSLER, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bechtle:

Q. Now, Miss Vossler, what is your address?

A. 43 North Walnut Street, East Orange, New Jersey.

Q. And what was your address in January of 1955?

A. 43 North Walnut Street, East Orange, New Jersey.

Q. Now, are you employed, Miss Vossler?

A. No, sir.

Q. Well, are you retired?

A. Yes, sir.

Q. Do you know Charles Meierdiercks?

A. Yes, sir.

Q. Is he in the courtroom now?

A. Yes. He is.

Q. Will you point him out, please.

[fol. 98] A. He is the center man of the three men seated in front of me opposite:

Q. Is he now standing?

A. That is the man; yes, sir.

Mr. Bechtle: I would like the record to indicate that Miss Vossler did point out the witness Meierdiercks.

The Court: The record will so indicate.

By Mr. Bechtle:

Q. Do you know Mr. Meierdiercks or did you know him by any other name?

A. Yes, by the name of Chester LeRoy.

Q. Now, when did you know him as Chester LeRoy?

A. Because he called up my house—

Q. I say when.

A. That was January, 1955, January 14, the first time I saw him.

Q. Now, under what circumstances did you know him as Chester LeRoy?

A. He called at my house in regard to a—some leases which I had on oil land in Wyoming. They were federal leases.

Q. Now, could you explain to us any conversations that you had with him when he made himself known to you as Chester LeRoy at your home.

[fol. 99] A. Well, I had previously had a phone call from Youngstown, Ohio. The man—

Q. Do you recall whom that was from?

A. The man said he was Anthony Miller.

Q. And when was that phone call?

A. In December of 1954, about ten days prior to Christmas.

Q. Well, then what happened next?

A. Well, the man said he would be there the next morning, and he asked about the lease in Big Horn County, Wyoming, and he wanted to know if I was interested in selling it.

I said, "Well, I wouldn't deal with no one but a major oil company, not with any broker, of whom there are a number of brokers," and he said he would be in the next morning. I said, "That is pretty fast, isn't it, from Youngstown?"

He said, "Oh, well, we can get there," or some such remark.

So next morning when he didn't appear I checked with the telephone company to see if there had been a call from Youngstown but I was too late to ascertain that anything had happened.

Q. And this was in December of 1954?

A. Yes, about the 15th of the month.

Q. All right.

[fol. 100] Now, what happened in January of 1955?

A. Well, Mr. LeRoy, as I thought he was called, came in that morning, on the morning of January 14, 1955; so, of course, the subject came up of the leases and he made an offer.

Q. Do you recall how much he offered?

A. First he offered \$15 an acre and 1/64 override. Then he increased the offer to \$20 and 1/32 override. The override is the nature of a royalty-if and when they ever discover any oil.

Q. Well, now, did he leave your home after that first visit that same day?

A. Yes. He did.

Q. And did he return?

A. I don't recall that he did.

Q. He did not return after the first visit?

A. I can't recall that he did.

Q. Did you receive any calls after his visit?

A. No phone call, no. Monday a man came, Monday morning, the following Monday, Monday night—let's see—that would be the 17th.

Q. Well, now, let us just get one thing straight. The first visit, well, you say was on the 14th?

A. Yes, sir.

[fol. 101] Q. Now, that was a Friday, was it not?

A. Yes.

Q. And that was the day that M. LeRoy or Mr. Meierdiercks—

A. Yes.

Q. —came to your home. That was the first visit. Now, what happened after that Friday?

A. Well, a man came Monday morning about 9 o'clock in the morning, rather early.

Q. And do you know who he was?

A. Well, he said his name was Rice, but other than that he didn't identify himself.

Q. Is he here in this courtroom today anywhere?

A. No. He is not.

Q. And what did he say to you, Madam?

A. Well, he said he was interested in the leases, and I had told him that another man had visited me and made an offer.

Q. I see.

A. So he made another offer.

Q. And what did you tell him after he made his offer?

A. Well, I would think it over, of course, and I couldn't say anything beyond that. I don't remember now just exactly the amount of his offer, but I think it was \$30 an acre, I think 3 per cent override.

Q. And did he leave after that?

[fol. 102] A. Yes. He left.

Q. And what happened next, if you recall?

A. I think Mr. LeRoy came back in the afternoon.

Q. And what was the reason for that visit, if you know?

A. Well, in regard to the leases. I am not sure whether it was that afternoon or the following morning.

Q. But in any event he returned?

A. No. I think—yes, he did return, and then there was some more discussion, of course, about the price and the override.

Q. And what happened after that meeting?

A. Well; he offered the same amount as the other man. That was Rice.

Q. And do you recall how much that amount was again?

A. \$30 an acre and 3 per cent.

Q. And what did you tell him when he made that offer?

A. Well, I was sort of reluctant, because the subject came up, of course, of selling three leases; two of them I had not had for six months, and the first lease I did have for six months.

Of course, the question of the tax came up. I felt it was just as well to wait.

Q. Now, when did that subject of the tax come up?

A. Well, I think that was the second visit.

[fol. 103] Q. And could you explain to us what representations were made to you regarding this tax situation?

A. Let's see—that was Monday. Well, there wasn't too much said about it at that time.

Q. Was there something said about—

A. I think the next day it came up more definitely. This is—

Q. Was this another visit?

A. Yes. This is another visit came from Rice. But Mr.

Meierdiercks I think was in first on Tuesday and Rice came later.

Q. Now, what did Mr. Meierdiercks say about this tax?

A. Well, he said I could receive the same treatment as another business firm or another oil company would receive; they buy and sell leases from each other, and that I could make the same arrangement, that I would get a net amount of money and they would take care of the tax, but that I would have to advance 10 per cent of the sum received, supposed to be received by me eventually.

Q. Well, now, how much was the total sum that you were supposed to receive eventually?

A. \$57,600.

Q. And 10 per cent was \$5,760?

A. Would be \$5,760.

[fol. 104] Q. Did you tell Mr. Meierdiercks that you were interested in this tax arrangement?

A. Well, yes, in a way.

Q. Would you explain what you mean by that?

A. Well, I was willing to advance his \$5,760, but I felt that he should have to sign a paper sent to the bank in Philadelphia and that would take care of that end of it.

Q. Well, in any event, how did it finally come out? What did you plan to do?

A. Well, later, of course, I went with Mr. Meierdiercks to Philadelphia and no papers had arrived.

Q. How did you get from East Orange to Philadelphia?

A. In the meantime, I might add, of course, Mr. Rice called again, said he could not meet the arrangement that Mr. LeRoy had made for me. He couldn't do that. He could not make a net deal.

Q. But, in any event, you did go to Philadelphia?

A. That was Tuesday, yes, but we agreed to go to Philadelphia on Wednesday morning. That was the 19th of January.

Q. And did you so go?

A. Yes. We went.

Q. And how did you go from East Orange to Philadelphia?

A. By taxi to Newark and by Penn Railroad to Philadelphia, and by taxi to the bank.

[fol. 105]. Q. Whom did you go with?

A. With Mr. LeRoy, as I thought he was.

Q. Was anyone else with you?

A. No, no one.

Q. And after you got to the bank—well, first, what bank did you go to?

A. Girard Trust, 2nd and Chestnut Street Branch.

Q. And after you got to the bank, would you tell us what happened.

A. Well, as near as I can remember, we have to go in to see about the certified check. First, Mr. Meierdiercks, LeRoy, suggested I give him cash and he would wire it to his firm in Texas, but I said no, I wouldn't do that; I would have to give a check of some sort. That was the reason we went to the bank—it had to be certified—

Q. I see.

A. —because I could give a check made to that.

Q. Well, could you tell us what happened at the bank?

A. Well, I said I wanted to know if it wasn't possible to see a man in the bank about it, and I don't remember the reason he gave me, but it seemed plausible at the time, and I said, "Well, I want to know with whom I am dealing," and he pulled out a contract from his pocket on which was printed the Gulf Production Corporation name. The contract was a printed contract, but it was made out to another man and gave an offer, I think, of \$22 or something per acre in Wyoming, in some other location not too far from where I was, and the contract was signed with three names at the bottom in handwriting. One was—one of which was Chester LeRoy.

Q. Do you recall what other names were on there?

A. No. I didn't see them. They weren't distinctly written.

Q. Well, did you get the check as you had planned to do?

A. Yes. I did that.

Q. Now, Miss Vossler, I have handed you Government's Exhibit No. 1—that is G-1—and I wonder if you will tell me whether you have ever seen that before.

A. Yes, sir.

Q. And what is it?

A. This is a canceled check, certified check made out to F. M. Vossler for \$5,760.

Q. Is that the check?

A. And endorsed by me on the back, F. M. Vossler.

Q. Is that the check that you got the day you went to the bank with Mr. Meierdiercks?

A. That is the same check; yes, sir.

Q. Well, after you received the check, what did you do then?

A. We took a cab to, I think, the Bellevue Stratford Hotel.

[fol. 107] Q. And what happened there?

A. We sat down at a desk in the lobby, and Mr. LeRoy said that he would phone his supervisor in Texas, supposedly, and he went to the rear of the lobby for this purpose.

I didn't see him telephone, because I couldn't see the telephone from where I was, but I know the phone room was in the rear.

Q. And what happened when he came back from making that purported call?

A. Well, he said everything was fine and I would soon have the papers. They were temporarily held up. I don't know the real reason he gave me now—I can't remember that—but I asked for a receipt.

Q. Miss Vossler, I hand you—

A. Oh.

Q. —Exhibit G-2 and I wonder if you would tell us what that is.

A. Well, that is the receipt he wrote, as far as I know.

Q. Did you ask him for that?

A. His signature is on here, Chester LeRoy, and I said to put the name of the company in—I mean, I wanted to know, have that on there—Gulf Production.

Q. Did you ask him for the receipt?

A. Yes, I did.

[fol. 108] Q. And in your presence did he fill it in and give it to you, if you recall?

A. Well, he went to the rear again. I think he didn't have a receipt, a form, or something, and he said he would

get one. He went to the back of the lobby and then he returned with a receipt.

Q. Well, now, Miss Vossler, what happened after you received the receipt?

A. Well, I guess we were about ready to leave. I turned over the check.

Q. And do you recall what happened after you turned over the check?

A. Well, we suggested to go to the train, of course. We had lunch either before or after, but I don't remember whether it was on the way or whether it was after.

Q. You mean on the way to the Bellevue or on the way from the Bellevue?

A. We left the Bellevue, anyway—

Q. But in any event—

A. —and went and had lunch first when we went to the station or before we went to the Bellevue, and we passed a gentleman on the way to whom Mr. LeRoy tipped his hat. I could not see the man's face, but I saw the man make sort of a sign towards his head, you know. He had a dark [fol. 109] overcoat and not a very tall man in an Alpine hat. I think that is what you call those felt hats.

Q. And then what did you do next?

A. Well, I guess we went to the station, and I was supposed to go home and Mr. LeRoy was supposed to go some place else—I think Baltimore.

Q. And did you go home?

A. Yes; I did, but before leaving him I said, "Well, there are no papers. This doesn't seem quite right to me." And he said, oh, I have nothing to worry about.

Q. And did you go home after that conversation?

A. Yes, I went home.

Q. And what happened, if anything, next?

A. I telephoned to New York City, since I had the name of an oil company, and it was the Gulf Production. I telephoned Gulf Oil and I asked if they were in the habit of sending men out to buy leases without showing who they were and other details.

Well, he said sometimes they did do that occasionally. There were reasons for doing it.

Q. Do you recall when you made that telephone call?

A. That same day.

Q. When you got home?

A. Yes.

[fol. 110] And he said, well, he would find out about Mr. LeRoy and Mr. Rice; he didn't know the men, because he was in New York, and that Gulf Production Corporation was a leasing subsidiary of Gulf Oil. That is the way he explained it to me on the telephone.

Later I wrote them, too, a letter to Tulsa, Oklahoma, which is their main office, and not Texas.

Q. And what were the results of your inquiries?

A. Well, they had to telephone to Montana and some of the western states, and the result was that they didn't know Mr. LeRoy nor Mr. Rice.

Q. When was the next time that you either heard from or saw Mr. Meierdiercks or Mr. LeRoy, as you knew him?

A. The next time I saw him I think was in this courtroom last year.

Q. Is that last June, Miss Vossler?

A. Yes, June, 1956.

Q. Did you ever receive anything in exchange for your money?

A. No, nothing.

Mr. Bechtle: Thank you, Miss Vossler. That is all.

Mr. Singer: May it please the Court, at this time I wish to make seasonable application for production of the [fol. 111] E. B. I. reports and the Grand Jury notes of testimony and other pertinent material in the possession of the government concerning this particular witness:

The Court: Well, the government has already turned over to me for delivery to you C-8, which is a statement, a report, dated February 21, 1955, which has attached to it a statement of the witness, which I will give you?

C-9, which is a summary of a conference with the witness attached to a report on June 15, 1955;

and C-10, which are two pages of a report of May 2, 1955.

Now, the government has also made available a whole series of letters, correspondence with—

Mr. Bechtle: That is the original, I think, Your honor, of the first statement.

The Court: It is correspondence between the United States Attorney's Office, apparently, and Miss Vossler, and I will look through these and see if they have any bearing on the testimony. I haven't had any chance to do that yet.

This document which the government has just handed me, which we can have marked C-11, is apparently the original of the statement which is attached there to C-8.

So that should be marked C-11.

(Statement was marked Exhibit C-11 for identification.)

[fol. 112] The Court: I think that is the same as is attached to C-8. You can compare them.

Mr. Bechtle: If Your Honor please, just for the record, and I want to make sure that I will say it is just for the record, I would like at this time to incorporate by reference, if it is possible, my same objections as to the limitations which the government feels that these documents have to the defendant's requests for turnover, as I did to the statements of Mr. Meierdiercks, I think, yesterday.

The Court: You mean the statements were only turned over for the purpose of cross-examination?

Mr. Bechtle: No. I mean that it is my position that the right to turnover is limited to the recent statute, I think, and that those statements that are, in fact, within the definitions in that statute, I am anxious that Mr. Singer see; however, things other than adopted, signed statements of this witness, Miss Vossler, I do not think are subject to the turnover provisions.

The Court: All right. I have gone beyond the statute and I have turned them over to him,—

Mr. Bechtle: I say that just for the record.

The Court: —some of these statements that you wouldn't voluntarily give, but you will be granted exception on the [fol. 113] record to my action.

Now, I suggest you read those over, and meanwhile I will read these letters and see if there is anything in them. It appears to me that the letters merely concern Miss Vossler's coming here to testify, but I will look over all of them and I will put them in a separate envelope which will be marked C-12 so that they will be here for any appellate court to look at. Meanwhile you can start reading those over.

Will you make a note of the time these documents were turned over.

(Foregoing documents turned over to counsel for the defendant at 11:45 o'clock A. M.)

(Correspondence between U. S. Attorney's Office and F. M. Vossler, except for C-13 and C-14 was placed in a sealed envelope marked C-12 for identification.)

[fol. 114] The Court: Mr. Blumberg, would you mark this letter of June 5 as C-13 and the letter of June 12 as C-14. They are both dated 1956. Then show them to Mr. Bechtle so that he can see what they are and then give them to Mr. Singer. I don't think those help much; but they have some bearing.

(Letter of June 5, 1956, marked Exhibit C-13.)

(Letter of June 12, 1956, marked Exhibit C-14.)

(Exhibits C-13 and C-14 were given to Mr. Singer at 11:55 o'clock a. m.)

[fol. 115] Mr. Singer: May it please the Court, we are not denying the allegation that Mrs. Vossler is making from the stand, not in the least, but there are certain things that she has not testified to that are contained in these other reports. There are certain items which we assume are as truthful as the statements she is making here, and we want to get all this on the record. We feel that the Court, the ladies and gentlemen of the jury, and the defendant are entitled to have all these facts on the record.

[fol. 116] By the Court:

C. You apparently were interviewed by certain agents at the end of March?

A. That is possible; yes. They were at my house a few times, you know, to question me.

Q. Yes; but you don't remember saying anything like [fol. 117] that to them, whatever that was—I didn't read it—do I correctly understand?

A. The way I read it. Maybe I better read it again.

The Court: Maybe you had better show it to her.

Mr. Singer: Is it all right if I read it out loud?

The Court: Yes. Read it out loud.

The Witness: Yes. Read it out loud?

Mr. Singer: I showed it to Mr. Bechtle.

The Court: Yes. Surely.

By Mr. Singer:

Q. I am now reading the second paragraph from the bottom:

"On March 31, 1955 Vossler stated that she appeared in Court on March 31, 1955; when Meierdiercks plead not guilty to the charge of selling securities in the State of New Jersey as the transaction was made in Pennsylvania."

A. Oh. Pardon me. I remember that now. That wasn't in the federal court. That was in the court in East Orange, a city court.

Q. That is correct.

A. But it doesn't state that there, does it?

Q. No. It does not.

A. Well, that is what I didn't remember. Now I remember.

[fol. 118] Mr. Singer: May it please the Court, I wish [fol. 119] to return at this time to the custody of the Court certain exhibits that were placed in my care.

The Court: All right. You just give them to the reporter and they will be kept with the other exhibits.

Mr. Singer: These are the Court's exhibits.

The Court: Yes, C-8, 9, 10.

Mr. Singer: Well, I just want to check and make sure they are all here.

The Court: Yes.

Mr. Singer: C-8, C-9, C-10, C-11, C-13, C-14, C-12, I understand—

The Court: That is the envelope in which I put the letters which I felt were just correspondence between the United States Attorney's Office and Miss Vossler and had no bearing on the examination,—

Mr. Singer: All right. Thank you.

The Court: —on Miss Vossler's testimony. Just put them on the bench there. Thank you.

[fol. 120]

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted].

Before Hon. Francis L. Van Dusen, J. and a Jury.

Philadelphia, Pa.

Transcript of Testimony—October 4, 1957

[fol. 121]

EXHIBITS RECEIVED IN EVIDENCE

The Court: C-1 and C-2, which are the Grand Jury testimony and the statement of Mr. Meierdjereks made in May, 1955, which is in this—you can open it out and read it here—there is a little piece of paper that goes around it—will be received in evidence, as will the other exhibits that we have mentioned.

[fol. 122] Mr. Singer: May I have the Court exhibits to refresh my memory?

The Court: Yes. They are all right here.

Mr. Singer: May it please the Court, C-4 and C-3 is part of the pretrial motion.

The Court: That's right, yes. I don't think you want them, but you asked me for all the Court exhibits.

Mr. Singer: Oh, I am sorry.

[fol. 123] The Court: I don't think you want that one, either, C-15. We don't want those, fine. C-7, C-14, C-13.

have been returned, in addition to the other ones. Here are some. These are exhibits D-13 to 15 I am handing you. My record indicates that D-11—

Mr. Singer: D-11 is the slip of paper bearing Meijer-diercks' signature.

The Court: Yes. It is D-12 and D-13, I think, that have been offered in evidence already by you and received. Yes. It is D-12 and D-13, that's right. D-12 is there.

Mr. Singer: I have D-13, D-14 and D-15.

The Court: Yes.

Mr. Singer: I don't have D-12.

The Court: D-12 is the statement that I handed you, part of the statement of Miss Vossler.

Mr. Singer: That is C-12, isn't it, Your Honor?

The Court: No, D-12. It is a portion of C-6.

Mr. Singer: I didn't see that.

The Court: And that has already been offered, and also D-13, by you, and they have been received in evidence, so if you want to hand those up to me I will put them with [fol. 124] the others. D-12 and D-13 you have already offered in evidence.

Mr. Singer: I am going to have to study them; Your Honor.

The Court: Take your time.

Mr. Singer: May it please the Court, at this time the defendant—

The Court: Now, ladies and gentlemen of the jury, listen to this.

Mr. Singer: May it please the Court, at this time the defendant moves for the admission into evidence of C-8, which is a mimeographed or duplicated summary of certain statements made by Miss Vossler to the Federal Bureau of Investigation covering the period January—well, correction, February 21, 1955. The report was made at Newark.

The Court: Do you have any objection?

Mr. Bechtle: No objection.

The Court: That will be received in evidence.

Mr. Singer: I would also like to introduce a single page, Page No. 2, marked Court's Exhibit 9, which is also a mimeographed and duplicated report concerning state—

ments made by Miss Vossler, and I have been informed it has been prepared by the Federal Bureau of Investigation. [fol. 125] There is no identifying Federal Bureau of Investigation, but the Court has so informed me.

The Court: That's right. That is the portion of that report which concerned Miss Vossler's statements to the agents of the Federal Bureau of Investigation. Do you have any objection?

Mr. Bechtle: No objection.

The Court: That will be received in evidence, C-9.

Mr. Singer: I would also like to introduce on behalf of the defendant Court's Exhibit 10, which is a copy of a report prepared by the Federal Bureau of Investigation, and it contains a summary of various statements given by Miss Vossler to the FBI on May 2 of 1955, and the report was prepared by Sidney D. Butterfield, Jr.

Mr. Bechtle: I have no objection.

The Court: Fine.

Mr. Singer: I would further like to present into evidence on behalf of the defendant the Court's Exhibit No. 11, which is a 3-page typewritten statement made by Miss Florence Vossler, and dated January 24, 1955. Miss Vossler signed at the bottom of each page, Your Honor.

Mr. Bechtle: I have no objection.

[fol. 126] The Court: Fine. That will be received in evidence. Ladies and gentlemen of the jury, you will find that some of these reports are duplicating. In other words, this is the actual statement signed by Miss Vossler, and my memory is that the whole thing is copied in C-8, which is one of the other documents. And where I have taken page out, it is because the report also contained information from other people who have not testified here, and therefore it is not relevant in our proceedings. Proceed.

[fol. 127] Mr. Singer: At this point, let me say one thing. There isn't a single line of testimony that Miss Vossler gave from that witness stand that is not the truth. We have no reason to doubt a single word that she has said. But she didn't say what Meierdiercks said. She merely

related as to how she was defrauded by Meierdiercks. She didn't substantiate all these side issues, as the Government wishes you to believe. She didn't substantiate any telephone conversations or meetings or plans or anything that allegedly occurred between Meierdiercks and Mr. Rosenberg. She didn't substantiate any of those things.

[fol. 128]

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

Philadelphia, Pa.

Transcript of Testimony—October 30, 1957

Before Hon. Francis L. Van Dusen, J.

[fol. 129] The Court: And I repeat that I am going to decide this case according to what the Jencks case decides and what the Third Circuit said rather than what the Congressional Statute said.

[fol. 130] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 131]

EXHIBIT C-7

*Handed to Mr. Stanley Singer at his offices at 12:19 PM
on 2nd of October, 1957.*

*/s/ James A. Matthews, Jr.
Law Clerk to
Judge Van Dusen*

Stanley Singer

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

CHAMBERS OF
FRANCIS L. VAN DUSEN
JUDGE

2110 UNITED STATES COURTHOUSE
PHILADELPHIA 7, PA.

October 2, 1957

Re: United States v. Joel Rosenberg
Criminal No. 18,582

Stanley B. Singer, Esq.,
2000 Commercial Trust Building,
Philadelphia 2, Pa.

Dear Mr. Singer:

I have had an FBI Report dated July 12, 1955, marked C-5. This report contains a copy of the statement of May 12, 1955, which I understand has been delivered to you, and has the following paragraph immediately after the statement:

"After signing above statement MEIERDIERCKS recalled that on approximately 1/18/55 or 1/19/55 while he was with ROSENBERG in East Orange, NJ, ROSENBERG purchased gasoline using his credit card at a Mobile gas station located to the rear of Best & Co.

Italicized matter handwritten.

Department Store in East Orange, N.J. MEIERDIERCKS said he believed that the gas station was located at the corner of Prospect & Washington Streets in East Orange, N.J."

Nothing else in this report of 7/12/55 has any relevance to Mr. Meierdiercks' direct testimony.

I enclose pages 2 to 4, inclusive, of an FBI Report dated 2/10/55, which I have had marked C-6. The first page of this report just contains a synopsis of the detailed report enclosed. The last page merely talks about a hearing and gives a description of Mr. Meierdiercks' physical characteristics. The portions not delivered to you are being placed in a sealed envelope marked "C-5 and C-6."

Very truly yours,

Francis L. Van Dusen
Judge

FVD:bl

Enc.

CC: Louis C. Bechtle, Esq.
Assistant U. S. Attorney

[fol. 132]

(Envelope attached to letter to Mr. Stanley B. Singer from United States District Court, Eastern District of Pennsylvania, by Francis L. Van Dusen, Judge.)

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2110 JUDGE'S CHAMBERS

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

PHILADELPHIA 7, PENNA.

OFFICIAL BUSINESS

S. B. SINGER Esq.

2000 COMMERCIAL TRUST BLDG.

[fol. 133]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 18,582

UNITED STATES OF AMERICA

v.

JOEL ROSENBERG.

MEMORANDUM OPINION AND ORDER—January 3, 1958

VAN DUSEN, J.

The factual background of this case is summarized on the first three pages of the opinion filed November 23, 1956.¹ A new trial was ordered on June 26, 1957, by the United States Court of Appeals for the Third Circuit for failure of the undersigned trial judge to comply with the requirements of the opinion of the Supreme Court of the United States in *Jencks v. United States*, 353 U. S. 657 (1957).²

¹ The second two sentences of that opinion, which is reported at 146 F. Supp. 555, state:

"The first count charged the defendant with conspiring, in violation of 18 U. S. C. A. § 371, with C. K. Meierdiercks and an unknown individual (hereinafter called Mr. Rice, which name he used in dealing with the victim, Miss Vossler) to transport in interstate commerce securities or money having a total value of \$5000. or more, knowing the same to have been taken by fraud in violation of 18 U. S. C. A. § 2314. The second count charged the defendant with the substantive offense of transporting, with fraudulent intent, from Philadelphia to Washington, D. C., a fraudulently obtained certified check having a value of \$5,760. in violation of 18 U. S. C. A. § 2314."

² See pp. 12-14 of opinion of 11/23/56, citing, among other cases, the decision of the United States Court of Appeals for the Fifth Circuit in the above-mentioned *Jencks* case (226 F. 2d 540), which was subsequently reversed by the Supreme Court of the United States.

[fol. 134] At this new trial, lasting from October 1 to October 7, 1957, substantially the same evidence was produced as that introduced at the former trial and the second jury also returned a verdict of ~~guilt~~ on both counts of the indictment. The case now comes before the court on defendant's motion for new trial and for the entry of judgment of acquittal, filed October 11, 1957.³

I. Alleged denial to defendant of his right to the effective assistance of counsel of his choice.

The defendant was represented by three lawyers⁴ prior to the time of filing of his Reply Brief on his second appeal to the United States Court of Appeals for the Third Circuit on June 6, 1957, when the name of Edward M. Dangel, Esq. (together with those of Mr. Singer and Mr. Dangel's associate, Mr. Sherry) first appears on any document in the files of any court in this matter.⁵ Mr. Singer was clearly the most active lawyer on behalf of the defendant from the time he entered his appearance in May 1956 until October 1, 1957, when the application for continuance of the second trial was made on the ground that defendant was entitled [fol. 135] to have Mr. Dangel, who was then ill, represent him at this trial. He not only participated actively in the first trial as assistant to Mr. Osinoff, who acted as chief

³ The letter of December 9 to counsel (attached as Annex D) explains the reason for the date of filing this Memorandum Opinion and Order. No action could be taken on the subject of this Motion denied by this Order until defendant had filed his Withdrawal Of Motion For Leave To Take Depositions Under Rule 15 (Document No. 67 in Clerk's file), which he had indicated would be filed at the argument on October 30, 1957 (N. T. 34-38), but which was not filed until 12/5/57.

⁴ These lawyers are Alexander Osinoff, Esq., Stanley B. Singer, Esq., and Anthony Albert, Esq. See Annex A to this Memorandum Opinion for a summary of the activities of these three lawyers on behalf of this defendant.

⁵ Mr. Dangel participated in the oral argument in that court on June 11, but, as stated below, no judge of this court had ever heard of his connection with this matter until October 1, 1957, except for his name on certain papers filed 8/30/57 and thereafter.

trial counsel, but also ably argued several motions before the trial judge, including the Motion for New Trial, signed both Notices of Appeal, and his name appears on all briefs filed for defendant in the United States Court of Appeals for the Third Circuit.

The first evidence in this court of any connection of Messrs. Dangel and Sherry with this case is the appearance of their signatures, together with that of Mr. Singer, on three pre-trial motions filed August 30, 1957, which was one week after notice that the case was listed for trial was sent to Messrs. Singer and Dangel (see Exhibit C-3).⁶ Neither of them have ever entered their appearance for defendant in this court and no other document bearing their signatures appears in the file prior to the October 1957 trial. Mr. Singer argued for the defendant in support of three pre-trial motions before this court on September 18, 1957 (see Document No. 51 in Clerk's file). Mr. Singer was present on behalf of the defendant at 10 A. M. on September 30, when the list was called, and the case was marked ready for trial without his objection and without his making any statement that he was not going to try the [fol 136] case or that the defendant's trial attorney was ill.⁷ On the morning of October 1, 1957, for the first time, the court was notified that (a) Mr. Dangel was to be chief

⁶ This notice, as is the practice in our court, was sent out by the United States Attorney's office and the fact that a copy was sent to Mr. Dangel was not known to the trial judge until the second day of the trial (October 2), when a copy was produced for addition to the record (N. T. 46).

⁷ See transcript of proceedings at call of this case on September 30, 1957 (Document No. 68—all document numbers are those placed on the documents in the Clerk's file). Mr. Singer indicated to the assignment judge on October 1 that "... we did contact him" (the trial judge) and made him aware of the statements made in court" (N. T. 2 of Document No. 53). Actually, this case had not been mentioned by either counsel to the trial judge at any time on September 30 or on October 1 until after Mr. Singer made this statement. Mr. Singer told the trial judge's secretary that he wanted to see the trial judge and was informed that the judge was in court hearing another criminal case. Mr. Singer did not approach the trial judge on September 30 either in the courtroom or, after court adjourned, in chambers.

counsel for the defendant at this trial, which had been scheduled since August 23, 1957, (b) he was ill and being committed to the hospital on October 2nd for surgery, (c) he had "part of the files in his possession," and (d) defendant applied for a continuance on these grounds.⁹ Mr. Singer, as counsel for the defendant, was told to make the application for a continuance to the judge to whom the case was assigned for trial. As soon as the trial judge completed the case he was then trying (approximately noon), Mr. Singer made his application for continuance and the facts concerning Mr. Dangel's illness presented to the undersigned were:¹⁰

[fol. 137] (1) Mr. Dangel had been aware of his illness since September 5 or 6 and had been advised, no later than September 27, that an operation would be necessary.

⁹ Subsequent information given to the trial judge indicated this date was October 3 (compare Exhibit C-4 (letter of Dr. Levine) with affidavit of Dr. Levine referred to in footnote 10). Defendant was actually admitted to the hospital on October 7 (see Amendment to Answer filed 11/29/57; Document No. 65).

⁹ See pp. 2 and 3 of transcript of proceedings on 10/1/57 before the judge presiding at the September 30 criminal list (Document No. 53).

¹⁰ The United States Attorney was asked by the undersigned to call Mr. Dangel's doctor, in the presence of Mr. Singer, to secure facts needed to make clear a brief letter presented by Mr. Singer (Exhibit C-4). These facts were secured from Dr. Levine by phone during the lunch hour and reported to the trial judge in open court at 2 P. M. on October 1 (pp. 5-6 and 13 ff. of Document No. 55). Affidavits of Mr. Dangel and Dr. Levine, filed on 11/8/57, state that it was understood in the summer of 1957 that Mr. Dangel was to try the case at the second trial, that Mr. Singer did not have the opportunity to examine Mr. Dangel's file prior to October 1, 1957, and that Dr. Levine had told Mr. Dangel, on September 29, that he was to be operated on on October 2 (see Document No. 62). However, such affidavits, which are not complete and, hence, misleading (see, for example, Amendment to Answer (Document No. 65) showing Mr. Dangel actually did not enter the hospital until after October 7, which was three days after the jury had reached its verdict), are irrelevant since the facts made available to the trial judge at the time he made his ruling are the relevant facts.

(2) Mr. Dangel knew, no later than September 29, that the operation was scheduled for October 3, 1957. Mr. Dangel would not be "available" for at least 20 days after the operation.

(3) The defendant himself knew of Mr. Dangel's condition at noon on September 29 (pp. 8-9 of Document No. 55).

(4) Mr. Singer had discussed Mr. Dangel's condition with him on September 29 (pp. 5-6 of Document No. 55).

With commendable frankness, Mr. Singer admitted that (a) he had been associated with the case from the beginning, (b) he had done most of the paper work, (c) he had presented approximately half of the argument in support of [fol. 138] the Motion for New Trial, and (d) he had been a member of the bar for three years, during which he had handled 100 to 125 criminal cases.¹¹

The United States Attorney opposed any continuance with vigor, and these additional facts were clear at that time:

(1) The transactions in question had occurred over 2½ years before and some witnesses at the last trial were already unavailable and the memories of others grew dim.

(2) This was a second trial, of which defendant had had ample notice.

(3) Defendant was delinquent in failing to notify the court and to have his file in court no later than the call of the list on September 30.¹²

(4) Witnesses had been brought a second time from Chicago, Boston and Baltimore for this second trial at considerable expense.

¹¹ Pp. 7-8 and 19 of Document No. 55.

¹² Night trains from Boston to Philadelphia are available every Sunday night at about midnight which the defendant could have taken to bring the file and Dr. Levine's letter to Philadelphia so he would have been here by 10 A. M.

(5) Mr. Singer was a competent attorney of defendant's choice and, particularly in view of the fact that defendant had had several attorneys, he should not be permitted to notify the court, after the call of the list, that one particular attorney was his chief trial attorney and was ill, when this information could have been furnished at the time the list was called on September 30.¹³

[fol. 139] The trial judge denied the motion for continuance and defendant claims a denial of his constitutional rights.¹⁴

The Sixth Amendment to the United States Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

The Supreme Court of the United States has made clear that this is a privilege which may be waived by the defendant, provided that there is an intelligent and competent

¹³ Pp. 6 and 10-12 of Document No. 55.

¹⁴ Cf. *Avery v. Alabama*, 308 U. S. 444 (1940). The trial judge has developed the factual situation before the court on October 1, 1957, when this continuance was first sought, because of his belief that two very important principles are involved:

(a) A defendant should always be permitted to have counsel of his own choice where there is no unreasonable delay in making known to the court both this choice and the fact that the lawyer of his choice cannot be available on the date scheduled for trial.

(b) A trial court must have the power to deny a continuance, particularly at the listing of a case being tried a second time, of which the defendant has had over a month's notice, where the defendant has notice of the unavailability of his counsel at the time of the call of the list and permits the case to be marked for trial without notifying the court. At the call of such a one-week list, the schedule is set up for trial for the balance of the week and, in addition to the reasons stated above, to permit defendants to secure continuances later in the week on grounds available but not made known at the time of the call would clearly result in waste of court and jury time of a court which has a large backlog of undisposed of cases. Cf. *Agronofsky v. Pennsylvania Greyhound Lines*, 248 F. 2d 829 (3rd Cir. 1957).

waiver. See *Johnson v. Zerbst*, 304 U. S. 338, 464-5, 467-8 (1938), referring to *Patton v. United States*, 281 U. S. 276, 297-302, 312-3 (1930). The trial judge believes the reasoning of these opinions supports the conclusion of the federal intermediate appellate courts, which have held that a defendant's conduct may prevent his reliance on this privilege when all the facts indicate that he has been unreasonably dilatory in asserting his right to counsel claimed to be his choice as chief trial counsel at the moment of trial, that counsel acting for him is competent, and that any failure in such counsel's opportunity for preparation is due to the fault of the defendant. See *Tinkoff v. United States*, 86 F. 2d 868, 876-7 (7th Cir. 1936); *Neufeld v. United States*, 118 F. 2d 375, 380-4 (D. C. Cir. 1941); *Moore v. United States*, 220 F. 2d 198 (D. C. Cir. 1955);¹⁵ cf. *Kobey v. United States*, 208 F. 2d 583, 592-4 (9th Cir. 1953). These cases support the refusal of the trial judge to grant a continuance on the record in this case.

Furthermore, Mr. Singer did an able job for the defendant at this trial and, on review of the trial judge's refusal to grant a continuance, the court is entitled to consider, among other things, the fact that defendant has not been able to show any prejudice resulting from the absence of the lawyer he wished to act as his chief trial [fol. 141] counsel.¹⁶ See *Neufeld v. United States*, supra, at 384; *Tinkoff v. United States*, supra, at 877.

¹⁵ The particular significance of this case lies in its reliance on footnote 3 in *Diggs v. Welch*, 148 F. 2d 667 (D. C. Cir. 1945), cert. den. 325 U. S. 889 (1945), where the court adopted, at p. 670, the principle that "For these reasons we think absence of effective representation by counsel must be strictly construed. It must mean representation so lacking in competence that it becomes the duty of the Court or the prosecution to observe it and to correct it." This case apparently adopts the above-mentioned language, used in a habeas corpus case, as applicable in a situation where the question of the effective assistance of counsel is raised on appeal from the denial of a motion for new trial.

¹⁶ Mr. Singer's failure to have the material in Mr. Dangel's file by September 30 was solely the fault of defendant and his chosen attorney (see, for example, last paragraph of Dangel affidavit, Document No. 62). Such file could clearly have been brought to Philadelphia on the night train on September 29 or on September

The cases relied on by defendant are inapplicable in the light of the facts in this case, particularly in view of the facts that (a) the defendant, who is not inexperienced in criminal matters,¹⁷ knew, about noon of the day before the call of the list, of his chief counsel's illness, was given that evening a doctor's letter (Exhibit U-4)¹⁸ stating that such counsel could not participate in the trial and failed to get the letter, or notice of its contents, to his chosen local counsel so that his local counsel remained mute when the case was called and listed for trial on the appointed day;¹⁹ (b) local counsel was experienced in criminal trials and thoroughly familiar with the evidence and background of [fol. 142] this relatively uncomplicated case, which had already been tried once; and (c) the record discloses that local counsel did an able, lawyer-like job for his client in this case.

II. Alleged restriction of the right of cross-examination.

Defendant contends in his briefs that on November 4, 1957 (N. T. 456-470), the trial judge limited his right of

30. The court recognizes that the defendant need not show ex-
prejudice. See *United States v. Venuto*, 182 F. 2d 519, 522 (3rd
Cir. 1950).

Among the criminal litigation in which defendant has been
involved there are included the following federal cases which have
been reported [see enclosure sent with letter of 1/28/57, attached
to this opinion as Annex B, for a more complete statement of the
major litigation (in most cases not resulting in convictions sustained
on appeal) in which Joel Rosenberg was named as a defendant]:

Rosenberg v. United States, 120 F. 2d 935 (10th Cir.
1941);

United States v. Cohen, 145 F. 2d 82 (2nd Cir. 1944),
cert. den. 323 U. S. 799 (1945);

United States v. Joel Rosenberg, 146 F. Supp. 555 (E. D.
Pa. 1956), reversed 245 F. 2d 870 (3rd Cir. 1957).

¹⁸ See page 3 of affidavit of Mr. Dangel (Document No. 62).

¹⁹ The record also shows that defendant's chosen local counsel
knew of Mr. Dangel's illness and that he might not be able to try
the case the day before the call of the list, but did not mention
this at the call of the list on September 30. It should be noted
that defendant never stated any objection to Mr. Singer but only
that he wanted Mr. Dangel as his chief trial counsel.

cross-examination of the Government witness Meierdiercks.²⁰ Meierdiercks' cross-examination had been concluded, the Government had concluded its case, and the defendant was putting on his case when defendant's counsel produced photostatic documents of two sentences (D-18 and D-19) on indictments to which the witness had pled guilty and stated: "We wish to introduce these two indictments" ²¹ Later, defendant's counsel had marked a photostatic copy of an indictment from the Southern District of Florida (D-20), which was apparently the basis of one of the two sentences. The trial judge ruled that the production of photostatic copies was not the proper way to prove these documents (N. T. 466 and 468). Counsel for defendant also requested permission to recall Meierdiercks to the stand for further cross-examination in order to show, through confronting him with D-18 to D-21, that (a) he had pled guilty in 1955 to criminal charges resulting from the events involved in this trial, and was [fol. 143] testifying for the Government in this case solely in order to get a lighter sentence on the two offenses covered by D-18 and D-19, and (b) his enumeration of his past criminal offenses at this trial was not complete.²² This request was denied since defendant's counsel had cross-examined Meierdiercks thoroughly for over four hours²³ and he had ample opportunity for cross-examination

²⁰ See page 10 of defendant's Reply Brief, which is the only reference in the briefs to defendant's vague and expansive claims of such limitations.

²¹ Apparently, meaning "sentences" as no indictments had been produced at that time. Because of the improper use of the term "indictments" by counsel for defendant, the trial judge made the same error during this discussion. See Line 11 of N. T. 461.

²² N. T. 459, 465. An examination of the record will show that it was most difficult for the trial judge to determine what defense counsel wished to prove at N. T. 450-470, but the trial judge made clear that Meierdiercks could be recalled as a defense witness (N. T. 463 and 468-70).

²³ From 2:15 Wednesday until the jury was excused that day at 5:29 (N. T. 202), and from 10 to 11 on Thursday morning (N. T. 209-243).

on both (a) and (b).²⁴ Furthermore, as to (a), Meierdiercks had already testified that he pled guilty to the indictment against him based on the facts involved in this case in order to get a lighter sentence and to cut down his costs (N. T. 232), defense counsel, in his closing argument, argued to the jury that this witness was testifying in this case to get leniency (N. T. 540-1, 546), and the trial judge instructed the jury that it was proper for them to consider whether his receipt of a three-year sentence in 1955 and the possibility of his being placed on probation might be taken into account in evaluating his testimony as being affected by his possible interest to favor the Government (N. T. 572). See *United States v. Migliorino*, 238 F. 2d 7, 11 (3rd Cir. 1956). Under these circumstances, the trial judge had the discretion not to permit [fol. 144] the recall of this witness for cross-examination on the morning of the last day of the trial, which was the last day of this jury term and a day on which the defendant and his counsel had requested an early adjournment for religious reasons (N. T. 202-3).²⁵

III. Denial of alleged right to examine FBI files and Grand Jury minutes prior to the trial and to have lengthy adjournments to examine such statements during the trial.²⁶

The decided cases make clear that a defendant has no right prior to the trial to statements of witnesses taken by the FBI or to a transcript of testimony given before the

²⁴ As pointed out above, the defendant had ample opportunity to get these documents (D-18 to D-20) from Mr. Dangel's file to Mr. Singer on Monday morning, September 30, a day-and-a-half before the trial began.

²⁵ Also, it should be noted that the trial judge ruled that Meierdiercks could be called as a defense witness to show the commission of a mail fraud offense in Florida similar to the offense with which the defendant was charged, but counsel for defendant declined this opportunity (N. T. 469-470).

²⁶ Paragraphs 2-6 of Motion for Judgment of Acquittal or Motion for New Trial.

Grand Jury.²⁷ See *Jencks v. United States*, supra; *Simms v. United States*, No. 13,658, Court of Appeals of District of Columbia Circuit, July 8, 1957; *United States v. Radio Corp. of America and National Broadcasting Co.*, Civil No. 21,743, E. D. Pa., July 17, 1957; *United States v. Grossman*, 154 F. Supp. 813 (D. N. J. 1957); *United States v. Malizia*, 154 F. Supp. 511 (S. D. N. Y. 1957); *United States v. Palermo*, 21 F. R. D. 11 (S. D. N. Y. 1957); *United States v. Anderson*, 154 F. Supp. 374 (E. D. Mo. 1957); *United States v. Benson*, 20 F. R. D. 602 (S. D. N. Y. 1957); cf. *United States v. Miller*, 248 F. 2d 163 (2nd Cir 1957), cert. den., 26 L. W. 3184 (1957); 18 U. S. C. A. § 3500. The [fol. 145] opinion of the United States Court of Appeals for the Third Circuit in this case says:

"The failure of the trial judge to permit counsel for the defendant to inspect *at the trial* the witness' grand jury testimony and statement to the F. B. I., as required by the rule announced in the *Jencks* case, compels us to grant a new trial." (Emphasis supplied)

See *United States v. Rosenberg*, 245 F. 2d 870 (3rd Cir. 1957). For this reason, defendant's contention that this court had the duty of submitting Meierdiereks' F. B. I. statements and the Grand Jury transcript prior to the trial is rejected.

Meierdiereks was the first witness called by the Government at after 4 P. M. on October 1 (N. T. 9). As soon as court adjourned that day (5 P. M.) and prior to the conclusion of the direct examination of this witness, defendant was given C-1 and C-2, being the Grand Jury minutes and a 9 $\frac{1}{4}$ -page handwritten statement signed by the witness, which documents were the subject of the appellate court's opinion in *United States v. Rosenberg*, supra, (N. T. 34, 39-40).

At the conclusion of the direct testimony of this witness at about 11 A. M. on Wednesday, October 2, defense

²⁷ See authorities cited in comment on order of May 31, 1956 (Document No. 9).

counsel applied for adjournment of the case until the following morning, even though he had had the previous evening to examine these statements and the testimony of this witness at the previous trial (N. T. 73-8). The court adjourned until 2:15 P. M. on October 2 as a result of this request.²⁸ Other reports of the FBI (consisting of less than four pages) covering interviews with Meier-[fol. 146] diereks were delivered to defense counsel at about 12 noon on October 2 (see Exhibits C-5 to C-7, N. T. 79-91).

The statements of Miss Vossler were given to defense counsel so that they could be examined during a 40-minute recess (N. T. 276-281) and also during the luncheon recess (N. T. 329).

After reviewing the record, the trial judge finds that his actions during the trial were in accordance with the foregoing authorities.²⁹

IV. Alleged disqualification of the trial judge for bias or prejudice.

Defendant's attorneys were notified by letter of August 23 that this case would be called for trial on September 30. Long before September 20, there was available to them the knowledge that the trial judge was one of four judges of this court assigned to criminal trials that week, but defendant made no oral or written request for the disqualification of the trial judge until after the case had been marked ready for trial at the call of the list on September 30. For the first time, counsel for defendant stated to the assignment judge on the morning of October 1, "We thought . . . Judge Van Dusen would not be the proper judge to hear this particular case" (N. T. 4 of

²⁸ The Grand Jury transcript (C-1) was only 22 pages. This application was made on Wednesday of the last week of this jury's term.

²⁹ In giving counsel for the defendant the Grand Jury transcript and in giving him C-1 and C-2 prior to the close of the direct examination, the trial judge acted more favorably to the defendant than 18 U. S. C. A. § 3500 specifies.

Document No. 53).³⁰ Congress has clearly provided that an [fol. 147] affidavit of "personal bias or prejudice . . . shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file within such time." 28 U. S. C. A. § 144. No good cause for failure to file such an affidavit on or before September 20 has been shown and there is no apparent reason why the procedure specified by Congress should not have been followed in this case. It might have been most difficult for the assignment judge to find another judge available to hear the case on the morning of Tuesday, October 1, of the last week of that criminal trial period.

³⁰ Later that day (October 1), counsel for defendant raised this point before the trial judge (N. T. 35-9) at the conclusion of the first day of the trial. At that time, counsel stated that the trial judge had used language at the time defendant was sentenced in February 1957 indicating defendant employed legal tricks (N. T. 35-6). The trial judge has had the notes taken by the reporter at this sentencing transcribed (Document No. 69) and the transcript shows the following comment by the trial judge (N. T. 12):

" . . . in 145 F. 2d Judge Hand said that he had no doubt that this man was guilty of the New Mexico offense, but Mr. Alberts was smart enough to get him off; that he had no doubt that he was guilty of the fraud. And Judge Hand is a very learned judge."

The opinion of Judge Hand in *United States v. Cohen et al.*, 145 F. 2d 82 (2nd Cir. 1944), cert. den. 323 U. S. 799 (1945), reads as follows at page 95:

"He complains of the admission against him of the opinion of the Tenth Circuit in *Rosenberg v. United States*, 120 F. 2d 935, in which it reversed a conviction against him in another case, this reversal resulting in the dismissal of the indictment. He could not have more deliberately invited the admission of this opinion than by volunteering the statement which he made upon the stand that, although he had been convicted, the judgment was reversed and the indictment dismissed. His purpose was obviously to give the jury to understand that he was cleared of any part in the fraud that was there involved, and that was a totally false purpose. He was not cleared at all; the indictment was dismissed only because the prosecution failed to prove the mailing of the 'count letter,' as the prosecution has failed here."

Furthermore, none of the alleged reasons for disqualification, stated in defendant's briefs constitute "personal bias or prejudice."³¹ In view of the complete treatment of this subject by Judge Madden in *United States v. Valenti*, 120 F. Supp. 80 (D. N. J. 1954), it would be repetitious to discuss it further.³² That opinion makes clear that there is no merit in this contention of the defendant. Cf., also, *Glasser v. United States*, 315 U. S. 60, 83 (1942).

There was sufficient evidence to support the jury's verdict as explained in the opinion of November 23, 1956.

ORDER

And Now, January 3, 1958, It Is Ordered that defendant's Motion For New Trial And For The Entry Of Judgment Of Acquittal and defendant's motion for judgment of acquittal made during the trial, held October 1-7, 1957, are Denied.

/s/ FRANCIS L. VAN DUSEN, J.

³¹ The trial judge has carefully considered all the references to the record at pages 8 and 9 of defendant's Reply Brief. At N. T. 592-3, the trial judge made clear on the record that he had never, directly or indirectly, indicated to the assignment judge a desire to try this case. The trial judge has the duty to assist in the expeditious conduct of the trial and his questions at N. T. 11, 26, 65-6, and 96-8 were within the scope of this function. In referring to the "past history of the case" at N. T. 463, the trial judge was referring to the divergent views which have been taken by different counsel at different times in this case. See opinion of November 23, 1956 (pp. 557-9 of 146 F. Supp.).

³² See, particularly, language of Judge Madden and quotation of Mr. Justice Frankfurter and Judge Frank at pp. 89-90 of 120 F. Supp.

[fol. 149] ANNEX A TO MEMORANDUM OPINION AND ORDER

Alexander Osinoff, Esq. appeared for the defendant at the time of his arraignment on November 28, 1955.

On May 14, 1956, Stanley B. Singer, Esq. formally filed his written appearance for the defendant and the following documents in the Clerk's file, following that Entry of Appearance until the first day of the trial commencing October 1, 1957, bear his signature:

Clerk's Document No.	Date Filed	Title of Document
5	5/14/56	Motion for Leave to Take Depositions under Rule 15, Federal Rules of Criminal Procedure
8	5/24/56	Petition for Disclosure of Matter Occurring Before Grand Jury Under Rule 6(e) of the Federal Rules of Criminal Procedure and/or Discovery and Inspection under Rule 16 of the Federal Rules of Criminal Procedure
12	6/18/56	Motion for Judgment of Acquittal or Motion for New Trial
24	11/5/56	Affidavit
32	12/3/56	Motion (signed jointly with Anthony J. Albert, Esq.)
33	12/3/56	Notice of Appeal
36	1/21/57	Supplemental Motion (signed jointly with Anthony J. Albert, Esq.)
40	2/14/57	Notice of Appeal
42	3/27/57	Petition to Vacate or Moderate Sentence
45	8/30/57	Motion for the Return of Seized Property and the Suppression of Evidence (signed jointly with Edward M. Dangel and Leo E. Sherry, Esqs.)

Clerk's Document No.	Date Filed	Title of Document
46	8/30/57	Motion for Inspection and Examination and Inspection of Statements [fol. 150] Made By Certain Government Witnesses to the Federal Bureau of Investigation (signed jointly with Edward M. Dangel, Esq. and Leo E. Sherry, Esq.)
47	8/30/57	Motion for Inspection and Examination of the Testimony of Certain Government Witnesses Before the Grand Jury (signed jointly with Edward M. Dangel, Esq. and Leo E. Sherry, Esq.)
48	8/30/57	Motion for Continuance

There have also been added to the Clerk's file the following two documents containing authorities, signed by Mr. Singer alone and filed with this court on behalf of the defendant:^a

(1) 2-page letter of May 28, 1956, containing numerous authorities in support of defendant's Motion For Leave To Take Depositions Under Rule 15, Federal Rules of Criminal Procedure.

(2) Defendant's Brief in Support of Motion For Judgment of Acquittal or Motion for New Trial, filed 9/14/56.

Mr. Singer was present, and participated in the questioning, at the deposition taken in the District of Columbia on May 17, 1956,^b as a result of an order entered granting the Motion referred to above as Document No. 5. He argued

^a It is understood that Mr. Singer's name appears, along with that of other counsel for the defendant, on all the briefs filed in the United States Court of Appeals for the Third Circuit in support of the appeal argued in June 1957.

^b See Document No. 6 in Clerk's file.

the Motion referred to as Document No. 8 at length on behalf of the defendant, presenting authorities in support [fol. 151] of defendant's position.^c He participated actively in the preparation for the first trial^d and was associated actively with Mr. Osinoff in the defense of defendant throughout the first trial in June 1956. He was present at, and participated in, the argument on defendant's Motion for Judgment of Acquittal and For a New Trial on October 5, 1956 (Document No. 22):

Anthony J. Albert, Esq., of Santa Fe, New Mexico, entered his appearance for defendant on October 8, 1956 (Document No. 18). Thereafter, Mr. Singer signed the documents filed on behalf of defendant either alone or jointly with Mr. Albert until August 30, 1957.

On August 30, 1957, the four motions filed contained the signatures of Edward M. Dangel and Leo E. Sherry, as well as that of Mr. Singer, and there is no record of any entry of appearance of either Mr. Dangel or Mr. Sherry ever having been filed in this court.^e

^c See last sentence of footnote 2 to Order of 5/31/56.

^d See Mr. Singer's affidavit of 11/5/56 (Document No. 24).

^e On November 22, 1957, there was filed in this court a withdrawal of appearances of Messrs. Dangel and Sherry on stationery headed "Dangel & Sherry, Eleven Pemberton Square, Boston" (Document No. 6). A copy of this letter was sent directly to the undersigned's chambers. This copy, together with a copy of the undersigned's letter sent to both counsel, are attached to this Memorandum Opinion as Annex C. No explanation has ever been offered by defendant of this withdrawal of Mr. Dangel's appearance, which was, in fact, never entered.

[fol. 152]

ANNEX B TO MEMORANDUM OPINION AND ORDER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

CHAMBERS OF
FRANCIS L. VAN DUSEN
JUDGE

2110 UNITED STATES COURTHOUSE
PHILADELPHIA 7, PA.

January 28, 1957

Re: United States v. Joel Rosenberg
Criminal No. 18,582

Alexander Osinoff, Esq.,
527 South 42nd Street,
Philadelphia 4, Pa.

Dear Mr. Osinoff:

I have today entered an order dismissing the pending motions filed on behalf of the defendant in the above case and have directed that he report for sentencing on February 4, 1957, at 2 P. M. so that there may be no further delay in final disposition of the matter in this court, thereby enabling the defendant to file any appeal he cares to take to the United States Court of Appeals for the Third Circuit.

I enclose herewith the ribbon copy and a carbon copy (which you may care to send to Mr. Rosenberg) of some presentence data which I have obtained from various official sources. I want it clearly understood that I do not usually make it a practice of abstracting such data for counsel for defendants and that I am not setting any precedent which I will necessarily follow in other cases. However, I believe that you and Mr. Singer have been sincere and respectful in your representation of Mr. Rosenberg and am happy to accord you the opportunity to comment on the enclosed data if you care to do so at the time of sentencing. It seems quite clear from Mr. Albert's schedule, as announced by him on January 21, 1957, that he does not plan to be present at the time of sentencing.

With all the consideration which I have given to this matter, I feel confident that you will cooperate with me in

producing Mr. Rosenberg for sentencing on February 4 and in avoiding any further delays. If you have a court engagement that day, I will be glad to schedule the sentencing for 9 A. M. or 4 P. M.

[fol. 153] Since you represent Mr. Meierdiereks in connection with the indictment filed against him in this court under Criminal No. 18,328, it seems clear that a copy of that indictment was available to you, but if not, I have a copy in my file which I am happy to have you examine if you care to do so.

Very truly yours,

Francis L. Van Dusen, Judge.

FVD:bl

Enc.

CC. Stanley B. Singer, Esq., Anthony J. Albert, Esq., Robert W. Lees, Esq.

[fol. 154] Outline of Information in Presentence
Report Concerning Joel Rosenberg

He has been in financial difficulties most of his life and has been frequently in trouble with the law because of his obtaining money illegally and then struggling himself, or through one of his family, to make restitution to avoid prosecution. His record includes these items:

7/15/25	Larceny	Central	Probation
7/29/25	Violation of auto law	Dorchester	
3/18/26	Default removed	Central	Probation
2/16/29	Larceny, 2 counts	Roxbury	
4/ 2/40	Conspiracy	Rock Island, Ill.	
7/20/40	Confidence game	Chicago, Ill.	
9/ 5/40	Using mails to defraud	Albuquerque, N. M.	
3/10/42	Using mails in Scheme to Defraud (oil royalty case)	Federal Ct. New York	Prison sentence of 5 years and pro- bation for 3 years

4/15/42	Mail fraud	New York, N. Y.	
5/ 5/42	Violation of Title 18 USC § 415	Chicago, Ill.	
5/ 8/42	Grand larceny (Confidence game)	New York, N. Y.	12/10/42, Sing Sing 5 to 10 years on Count #5 plus 5 to 10 years on Count #8 to run consecutively, a total of 10 to 20 years
[fol. 155]			
11/17/42	Grand larceny, 1st degree (2 counts)	Brooklyn, N. Y.	
1/23/45	Petty larceny	Brooklyn, N. Y.	
2/10/49	Larceny	Central	

The defendant did not give the presentence authorities a definite statement of his activities.

His past record indicates that he has a very easy conscience when it comes to dealing with other people's money and other people's property.

[fol. 156]

ANNEX C TO MEMORANDUM OPINION AND ORDER

November 27, 1957

Re: United States v. Joel Rosenberg
Criminal No. 18,582

Louis C. Bechtle, Esq.,
Assistant U. S. Attorney,
4042 U. S. Court House,
Philadelphia 7, Pa.

Dear Mr. Bechtle:

This will acknowledge with thanks your letter of November 25 with enclosure.

A copy of the enclosure was sent directly to me without any explanation from the sender. I presume you have no information concerning the reason for the November 21st letter to the Clerk.

Very truly yours,

Francis L. Van Dusen, Judge.

FVD:bl

CC. Stanley B. Singer, Esq.

[fol. 157]

DANGEL & SHERRY
Eleven Pemberton Square
Boston
Lafayette 3-3780

Edward M. Dangel
Leo E. Sherry

November 21, 1957

Clerk, U. S. District Court
For the Eastern District of Pa.
Ninth & Chestnut Streets
Philadelphia 7, Pa.

Re: U. S. v. Rosenberg
Criminal #18582

Dear Sir:

Please withdraw the appearances of Edward M. Dangel and Leo E. Sherry for the defendant in the above entitled case.

Very truly yours,

/s/ Edward M. Dangel, /s/ Leo E. Sherry

D S:B

[fol. 158]

ANNEX D TO MEMORANDUM OPINION AND ORDER

December 9, 1957

Re: United States v. Joel Rosenberg
Criminal No. 18,582

Louis C. Bechtle, Esq.,
Assistant U. S. Attorney,
4042 U. S. Court House,
Philadelphia 7, Pa.

Stanley B. Singer, Esq.,
2000 Commercial Trust Bldg.,
Philadelphia 2, Pa.

Dear Counsel:

After careful consideration of arguments, briefs, and record, I have concluded that defendant's Motions for Judgment of Acquittal and For New Trial should be denied. In view of the Notice of Appeal filed in November 1956, the Order and Memorandum Opinion denying these motions will be filed on the day of sentence.

The sentence will take place at 2 P.M. on January 3, 1958, and I am sending a copy of this letter to our Probation Department so that a pre-sentence report may be prepared and submitted to me prior to that date. The January 3 date is being set so that the defendant may not be bothered by this matter during the holiday season.

Very truly yours,

Francis L. Van Dusen, Judge.

FVD:bl

CC. Clerk of the District Court, Probation Department.

Dear Mr. Bechtle: Will you please notify the surety that defendant is directed to appear for sentencing on January 3, 1958?

Very truly yours,

[fol. 159]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,554

UNITED STATES OF AMERICA,

v.

JOEL ROSENBERG, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

Argued June 9, 1958

Before: KALODNER, STALEY and HASTIE, Circuit Judges.

OPINION OF THE COURT—Filed July 22, 1958

HASTIE, Circuit Judge.

For a second time in the course of this litigation we must determine whether withholding from the defendant certain data, which defense counsel had asked the government to surrender for inspection and possible use in the cross-examination of witnesses, has amounted to reversible error under the principles announced in *Jencks v. United States*, 1957, 353 U.S. 657. On the first appeal we set aside appellant Rosenberg's conviction, holding that the "failure of the trial judge to permit counsel for the defendant to inspect at the trial the witness' grand jury testimony and statement to the F.B.I., as required by the rule announced in the *Jencks* case, compels us to grant a new trial." 245 F.2d 870, 871.

[fol. 160] A new trial followed. The defense again asked that the government produce for its examination reports and statements which might facilitate cross-examination of

two prosecution witnesses. The prosecution produced all of the records it had of its dealings with these witnesses. The trial judge then examined the data to determine how much of it was relevant and potentially useful for the purposes of the defense. As a result of this examination the court permitted defense counsel to examine and use most of the data. However, the court ruled that certain items were irrelevant and, over objection, denied the defense permission to examine them. At the same time, the court did make the documents in question part of the record for our consideration on appeal.

The crime for which appellant has been convicted was the transporting of a check in interstate commerce after participating in the fraudulent scheme by which the check had been obtained. 18 U.S.C. § 2314. The government's theory was that the appellant had collaborated with one Meierdiercks in the entire criminal enterprise. Meierdiercks appeared and testified as an important government witness. At the conclusion of his direct testimony the defense asked that it be permitted to examine the government's records of and concerning prior statements by the witness. A similar request was made for data concerning statements of the prosecuting witness, Florence Vossler, who had been the victim of the fraudulent scheme.

We have examined all of the items which the defendant was not permitted to examine. Several of the documents contain no reference to, much less the text or any summation of, anything said by either witness. For example, two are office memoranda concerning the progress and procedure of a then pending prosecution of Meierdiercks. Another paper contains a detailed physical description and summary personal history of Meierdiercks. Still another is a record of an unsuccessful search for certain names on hotel registers at or about the time of the crime. These [fol. 161] and other miscellaneous items from the prosecutor's files were obviously not germane to the request of the defendant. Why the prosecution produced them is not clear. Their surrender could not have been responsive to the defense request or to any proper request for whatever records the government had made, in verbatim text or otherwise, of prior statements of certain witnesses.

There was also a minute or office notation stating as a fact that, on first questioning, Meierdiercks had denied any involvement in the alleged wrongdoing. In some circumstances it might well have been improper to withhold this summary record of what the witness had said. But here Meierdiercks' first verbatim statement to the Federal Bureau of Investigation, denying implication in the wrongdoing, was among the papers surrendered to the defense. There was no point, therefore, in adding a general notation that he had made a denial of this kind. Similarly, the court withheld a typewritten copy of a later detailed statement of the witness about the crime. This too was surplusage, because the original longhand text of that very statement was surrendered to the defendant.

More troublesome is the fact that the court withheld from the defense a letter written to the prosecutor by the victim, Miss Vossler, just before the second trial of the case, in which she expressed concern that the lapse of time had made her recollection of details of relevant transactions hazy so that she would have to rely upon her previous detailed statement to refresh her memory. Certainly an admission by a witness to the prosecutor that time has thus dimmed her recollection of events as to which she is to testify is a type of statement which should be made available to the defense under the *Jencks* rule. But after examination of the actual testimony of Miss Vossler we think it clear that the defendant suffered no prejudice from this error. First, on cross-examination this witness was in fact questioned as to whether she had used any prior [fol. 162] statement or testimony in preparing for this second trial. She admitted quite forthrightly that she had read her former statement a few days before the trial. Moreover, defense counsel was allowed great latitude on cross-examination in testing what the witness said on this trial by comparing her testimony with earlier statements made in and out of court. There was no pretense by the witness that she remembered details of remote transactions as well as one would remember a very recent occurrence. And, absent any effort of the witness to create such an impression of unusually good memory, her pre-trial statement that time had dimmed her recollection merely ad-

mitted a fact of universal experience and common knowledge, of which the jury must have been aware in any event. Finally, no contested issue in this case depended upon the exactitude of this witness' recollection of details of remote transactions. In all the circumstances, we are unable to see any way in which the defense may have been prejudiced by the withholding of this statement.

Appellant is also dissatisfied with the timing of the surrender of the documents he was permitted to examine. He says that he should have received these records before the beginning of the trial rather than after the witness in question was called to testify. The *Jencks* rule is designed solely to facilitate proper cross-examination. Cf. *United States v. Grossman*, D.N.J. 1957, 154 F.Supp. 813. If the requested records are made available during the trial before cross-examination of the witness concerned, and counsel is allowed reasonable time to examine the data and analyze it in relation to the exigencies of cross-examination, the *Jencks* rule is satisfied. Here the documents concerning Meierdiercks, aggregating thirty-five pages, were in the possession of the defense from adjournment on Monday afternoon until cross-examination of this witness began at 2 P.M. on Tuesday. This was a reasonable time in all the circumstances. The records concerning Miss Vössler consisted of only nine pages. A two hour luncheon recess [fol. 163] and an additional forty minute recess were allowed for examination of this data before cross-examination began. And even on this appeal counsel does not point out any way in which the material concerning either witness would have been more useful, had more time been given to study and analyze it before cross-examination. Therefore, we think the appellant has no valid complaint on this score.

We have not commented upon the statute, 28 U.S.C. (Supp. V) § 3500, enacted since the *Jencks* case to define procedure in administering the *Jencks* rule, since, regardless of procedure, we have found no prejudicial withholding of anything to which defendant was entitled under the *Jencks* rule. We do note, however, that the government did not identify any particular documents or particular portions of documents which in its view should not be disclosed to the defendant. The statute seems to contemplate

that the government shall thus particularize any objection it may have, rather than that the court search at large through whatever documents the prosecution may tender in an effort to determine what is relevant and what is not. And if the government does not thus particularize its objections, we see no reason why the court should not routinely permit the defense to inspect whatever the government produces in response to a proper request.

A wholly different matter is urged as a separate reason for a new trial. The appellant complains of the trial court's refusal to grant a continuance just before the beginning of the trial, when it appeared that one of counsel, upon whom the appellant had relied to take chief responsibility for conducting his defense, had become ill and could not be present at the trial. However, the force of appellant's argument is blunted by the fact of unwarranted delay in presenting this matter in the court below. The attorney in question is a Boston lawyer. This case was listed on the trial calendar to be called in Philadelphia Monday morning. The preceding day, Sunday, the defendant was in Boston and learned that his Boston attorney required [fol. 164] immediate surgery and could not come to Philadelphia. This information was communicated that day by telephone to defendant's Philadelphia counsel. Yet, on Monday morning when the trial calendar was called, Philadelphia counsel answered "ready for trial". The judge who was administering the calendar then routinely assigned the case for trial to another judge, who happened to have presided at the first trial. It was not until the following day, Tuesday, that Philadelphia defense counsel asked for a continuance because of the necessary absence of chief counsel. Thus, for no apparent good reason the defendant postponed any request for continuance beyond the first and normal opportunity afforded by the calendar call and until it was determined which judge would try the case.¹ For us as a reviewing court this circumstance

¹ Unquestionably the defense was unhappy about this trial assignment, for counsel in open court frankly expressed his fear that the assigned judge would not have an open mind about the case because of his experience in trying it before.

alone is sufficient to preclude interference with the trial court's refusal to grant the delayed motion for a continuance.

Other trial errors are alleged on this appeal. Most of them concern the introduction of evidence and the giving of instructions to which trial counsel interposed no objection. In none of these episodes do we find that appellant has suffered prejudice or injustice, or that the trial court has committed reversible error.

The judgment will be affirmed.

[fol. 165] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,554

UNITED STATES OF AMERICA,

vs.

JOEL ROSENBERG, Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: KALCDNER, STALEY and HASTIE, Circuit Judges.

JUDGMENT—July 22, 1958

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

July 22, 1958

[fol. 166]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,554

UNITED STATES OF AMERICA,

v.

JOEL ROSENBERG, Appellant.

ORDER DENYING PETITION FOR REHEARING—August 15, 1958

Present: KALODNER, STALEY and HASTIE, Circuit Judges.

After due consideration the petition for rehearing in the
above-entitled case is hereby denied:

By the Court, /s/ William H. Hastie, Circuit Judge.

Dated: August 15, 1958.

[fol. 167]

SUPREME COURT OF THE UNITED STATES

No. 451, October Term, 1958

JOEL ROSENBERG, Petitioner,

vs.

UNITED STATES OF AMERICA.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF
CERTIORARI—September 9, 1958

Upon Consideration of the application of counsel for
petitioner,

It Is Ordered that the time for filing petition for writ of
certiorari in the above-entitled cause be, and the same is
hereby, extended to and including

October 14, 1958.

/s/ William J. Brennan, Jr., Associate Justice of
the Supreme Court of the United States.

Dated this 9th day of September, 1958.

[fol. 168]

SUPREME COURT OF THE UNITED STATES

No. 451, October Term, 1958

JOEL ROSENBERG, Petitioner,

vs.

UNITED STATES OF AMERICA.

ORDER ALLOWING CERTIORARI—December 8, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted limited to question 1 presented by the petition for the writ which reads as follows:

"I. Is the rule of this Court in *Jencks v. United States*, 1957, 353 U. S. 657, a rule of mere procedure, or does it involve a defendant's constitutional rights? May a clear violation of this rule be harmless error? May the conceded error of a trial court in withholding from defense counsel prior statements of principal Government witnesses be excused because a Circuit Court finds that the defense was not hampered in cross-examination of those witnesses? Is it proper for a Circuit Court to determine what use defense counsel might have made of statements erroneously withheld?"

The case is transferred to the summary calendar and assigned for argument immediately following No. 471.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of this application.

KEY TO BRIEFS

- 1 PETITION FOR A WRIT OF CERTIORARI
- 2 BRIEF FOR THE UNITED STATES IN OPPOSITION
- 3 BRIEF FOR THE PETITIONER
- 4 BRIEF OF ARTUUR L. HARRIS, SR., ARTHUR L. HARRIS, Jr.,
ERNEST F LEA and CHARLES W. MARSHALL, AMICI CURIAE IN
SUPPORT OF PETITIONER
- 5 BRIEF FOR THE UNITED STATES

This court made it clear in the Jencks case, at pp. 667-669, contrary to the position adopted by the court below, that it recognizes that only defense counsel has the right to determine the value and usefulness of a witness' statement. Title 18, U.S.C. § 3500 did not limit this right, nor transfer this function to a Court of Appeals. This Court has stated its position thus:

"Every experienced trial judge and trial lawyer knows the value for impeaching purposes of statements of the witness recording the events before time dulls treacherous memory. Flat contradiction between the witness' testimony and the version of the events given in his reports is not the only test of inconsistency. The omission from the reports of facts related at the trial, or a contrast in emphasis upon the same facts, even a different order of treatment, are also relevant to the cross-examining process of testing the credibility of a witness' trial testimony."

* * * * *

"... We hold, further, that the petitioner is entitled to inspect the reports to decide whether to use them in his defense. *Because only the defense is adequately equipped to determine the effective use for purpose of discrediting the Government's witness and thereby furthering the accused's defense, the defense must initially be entitled to see them to determine what use may be made of them. Justice requires no less.*" (Emphasis supplied)

II

Two to three months prior to the trial, petitioner, who comes from Boston, had retained and paid Edward M. Dangle, Esq., a Boston attorney, to defend him (R. 7a, 12a). Stanley B. Singer, Esq., of Philadelphia pursuant to local court rules, appeared as resident counsel. On the call of the Trial Calendar Mr. Singer, believing Mr. Dangle would arrive in time from Boston, answered "Ready", and the case was so